1242. By Mr. MAGEE of New York: Petition of citizens of Onondaga County, N. Y., in favor of the Cramton bill; to the Committee on the Judiciary.

1243. By Mr. MAJOR: Petition of a number of citizens of Cole Camp, Mo., protesting against the passage of House bills 7179 and 7822, or any other national religious legislation which may be pending; to the Committee on the District of Columbia.

1244. By Mr. MANLOVE: Petition of 36 residents of Joplin, Jasper County, Mo., protesting against compulsory Sunday observance; to the Committee on the District of Columbia.

1245. By Mr. MICHENER: Petition of residents of the city of Adrian, Lenawee County, Mich., against compulsory Sunday observance, etc.; to the Committee on the District of Columbia.

1246. By Mr. O'CONNELL of New York: Petition of the Associated Musicians of Greater New York, Local 802, A. F. of M., favoring legislation which will change or amend the Volstead Act, so that the use of light wines and beer shall be permitted; to the Committee on the Judiciary.

1247. Also, petition of the Captain Malcolm A. Rafferty Camp, United Spanish War Veterans, of Long Island City, N. Y., favoring the passage of House bill 8132, Knutson Spanish War pension bill; to the Committee on Pensions.

1248. Also, petition of the National Association of Credit Men of New York City, favoring the passage of the increase salary bill for Federal judges; to the Committee on the Judiciary.

1249. Also, petition of the Bar Association of Baltimore City, favoring the passage of House bill 8383, for an additional Federal judge for the district of Maryland; to the Committee on the Judiciary.

1250. Also, petition of the Brooklyn Bureau of Charities of Brooklyn, N. Y., favoring the passage of the Cummins-Graham compensation bill (S. 3170, H. R. 9498); to the Committee on the Judiciary.

1251. By Mr. PATTERSON: Resolution of the National Guard Association of New Jersey, favoring adequate appropriations for the organization, uniforming, equipping, training, and payment of additional number of officers and enlisted men; to the Committee on Military Affairs.

1252. By Mr. PEAVEY: Petition of residents of Montreal, Hurley, Spooner, Danbury, and Superior, Wis., protesting against the enactment of House bills 7179 and 7822; also, telegrams and letters protesting against the enactment of House bills 7179 and 7822; to the Committee on the District of Columbia.

1253. By Mr. REECE: Petition of citizens of Greene County, Tenn., opposing House bills 7179 and 7822, compulsory Sunday observance; to the Committee on the District of Columbia.

1254. By Mr. TILSON: Petition of William A. Kennedy and others, New Haven, Conn., protesting against compulsory Sunday observance; to the Committee on the District of Columbia.

1255. By Mr. YATES: Petition of Steele-Wedeles Co., wholesale grocers, of Chicago, by T. P. Hinchman, superintendent of coffee department, protesting against Senate bill 3052, proposing certain regulations in the labeling of foreign products packed in the United States; to the Committee on Agriculture.

1256. Also, petition of the National Cooperative Milk Producers' Federation, of Washington, D. C., protesting against any provision in the independent offices appropriation bill for the United States Tariff Commission, and urging that said commission be abolished; to the Committee on Appropriations.

SENATE

MONDAY, *March 15, 1926*

The Chaplain, Rev. J. J. Muir, D. D., offered the following prayer:

O God, Thou hast made us for Thyself and we can not rest except we rest in Thee. Enable us to appreciate that truth and apply it to our daily conduct, that as we think and as we do we may honor Thee, having Thee supreme in our endeavors to glorify Thy name; and that in every national as well as every personal responsibility we shall find access constantly to the guidance of Thy grace. Hear us, for Jesus' sake. Amen.

The Chief Clerk proceeded to read the Journal of the proceedings of the legislative day of Thursday last, when, on request of Mr. SMOOT and by unanimous consent, the further reading was dispensed with and the Journal was approved.

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Haltigan, one of its clerks, announced that the Speaker of the House had affixed his signature to the following enrolled bills, and they were thereupon signed by the Vice President:

S. 1430. An act to establish a board of public welfare in and for the District of Columbia, to determine its functions, and for other purposes; and

H. R. 6374. An act to authorize the employment of consulting engineers on plans and specifications of the Coolidge Dam.

CALL OF THE ROLL

Mr. SMOOT. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Ashurst	Ernst	Kendrick	Reed, Mo.
Bayard	Fernald	Keyes	Reed, Pa.
Bingham	Ferris	King	Robinson, Ark.
Blease	Fess	La Follette	Robinson, Ind.
Borah	Fletcher	Lenroot	Sackett
Bratton	Frazier	McKellar	Sheppard
Brookhart	George	McLean	Shipstead
Broussard	Gerry	McNary	Simmons
Bruce	Gillett	Mayfield	Smoot
Butler	Glass	Means	Stanfield
Cameron	Goff	Metcalf	Stephens
Capper	Gooding	Neely	Swanson
Caraway	Greene	Norbeck	Trammell
Copeland	Hale	Norris	Tyson
Couzens	Harreld	Nye	Wadsworth
Cummins	Harris	Oddie	Walsh
Dale	Harrison	Overman	Warren
Deneen	Heflin	Phipps	Watson
Dill	Howell	Pine	Wheeler
Edge	Johnson	Pittman	Williams
Edwards	Jones, Wash.	Ransdell	Willis

The VICE PRESIDENT. Eighty-four Senators having answered to their names, a quorum is present.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate the petition of the League of Women Voters of the Territory of Hawaii, praying for the reapportionment of members of the Senate and House of Representatives of the Territory of Hawaii, which was referred to the Committee on Territories and Insular Possessions.

Mr. FERRIS presented a petition of sundry citizens of Oakland County, Mich., praying for the speedy completion of the Coolidge Dam on the Gila River, in Arizona, which was referred to the Committee on Commerce.

He also presented memorials of sundry citizens of Grand Rapids, Mich., remonstrating against the passage of the bill (H. R. 102) to provide for the registration of aliens, and for other purposes, which were referred to the Committee on Immigration.

Mr. SIMMONS presented telegrams in the nature of memorials from W. L. Thornton, jr., of Wilson; Fred N. Tate, of High Point; the Chadwick Hoskins Co., of Charlotte; and the traffic bureau, Chamber of Commerce, of High Point, in the State of North Carolina, protesting against the passage of the so-called Gooding long and short haul bill, which were ordered to lie on the table.

He also presented a memorial of sundry citizens of Vance County, N. C., remonstrating against acceptance by the Senate of the terms of the Italian debt settlement, which was ordered to lie on the table.

Mr. TRAMMELL. Mr. President, I send to the desk and ask to have printed in the RECORD and referred to the Committee on Agriculture and Forestry resolutions adopted by the Chamber of Commerce of the city of St. Augustine, Fla., protesting against the proposed change in the plan of designation of national highways. It seems that there is in contemplation a change of plan to that of indicating the highways by numbers instead of maintaining names as at present. The resolutions are in protest against any change of that character.

There being no objection, the resolutions were referred to the Committee on Agriculture and Forestry and ordered to be printed in the RECORD, as follows:

Whereas recent recommendations of the joint board of interstate highways at Washington request the elimination of names of all present national highways, substituting therefor numbers; and

Whereas in certain cases this system will not provide a given mark the entire route of the highway, but allow several different sections to be instituted, which will without doubt prove confusing to the travel; and

Whereas a great number of motorists are now familiar with the names of the highways and look for these names at all times: Therefore be it

Resolved by the board of directors of the St. Augustine Chamber of Commerce, That the Florida Senators and Representatives in Congress

be urged to use their influence toward having the names of these national highways retained upon any markers used by the National Government; be it further

Resolved, That copy of this resolution be sent to the Florida delegation at Washington and to others interested.

CHAS. E. HARRIS, *Secretary*.

Passed in regular session of board of directors Wednesday, March 10, 1926.

RESIGNATION OF COMMISSIONER HANEY FROM SHIPPING BOARD

Mr. DILL. Mr. President, I ask unanimous consent to have inserted in the RECORD the letter of resignation of Mr. Bert E. Haney, former commissioner of the Shipping Board, together with resolutions adopted by the board in relation thereto.

There being no objection, the letter and resolutions were ordered to be printed in the RECORD, as follows:

FEBRUARY 23, 1926.

The PRESIDENT,
The White House.

DEAR MR. PRESIDENT: On August 27 of last year you requested my resignation as a commissioner of the United States Shipping Board, stating that my action in trying to remove the president of the Fleet Corporation was contrary to an understanding I had with you at the time of my reappointment. In my letter to you of August 28 I answered your request, setting forth at length that no such understanding had ever existed, and frankly pointed out that I could not at any time have agreed to take any action which I believed might be prejudicial to the Government shipping interests or in conflict with my obligation under the law as I interpreted it. Accordingly, I declined to resign, as my resignation might have been construed to be an admission that I had entered into the understanding you mentioned.

Under the then inefficient administration of the Fleet Corporation the Government fleet continued to lose ground rapidly to foreign shipping interests, and I felt it my duty to take every action possible to correct this condition.

The Shipping Board, on October 1, reasserted its power with respect to the duties imposed upon it by law and made such changes in personnel and administrative policy as to reestablish the regional control of the Government-owned merchant marine, in accordance with the provisions of the law creating the Shipping Board. These changes have brought increased revenues, lessened the cost of operation, reduced the personnel of the Fleet Corporation, and greatly increased the number of Government ships in operation, with the result that American shippers to-day are being furnished a substantially better service, and foreign shipping is no longer gaining ground at the expense of the Government-owned fleet.

These necessary reforms in the administration of the Fleet Corporation were made prior to December 7 last, the date the Sixty-ninth Congress convened. At that time you announced that it was your intention not to reappoint me and informed Senator MCNARY of your desire to nominate an Oregonian to succeed me as a commissioner of the United States Shipping Board. Since then I have expected daily to be relieved from service by your action. It has been my desire to allow you ample time within which to reach a decision as to my successor, but after a lapse of almost three months, in the absence of any action by you, and in view of the fact that my commission expires at the close of the present session of the Senate, I now feel that I may properly end my service.

For these reasons, I hereby tender my resignation as a commissioner of the United States Shipping Board, to take effect March 1, 1926.

Respectfully,

B. E. HANEY.

Resolution adopted by the United States Shipping Board on March 9, 1926

Whereas Hon. Bert E. Haney, of Oregon, since July 1, 1923, a commissioner of the United States Shipping Board, has severed his official relations with the board; and

Whereas by his legal abilities, his unfailing industry and active participation in working upon the problems of this board, and his aggressive championship of an adequate merchant marine under the American flag, he has endeared himself to the members of this board with whom he has severed: Now therefore be it

Resolved, That this board take this method of expressing to Mr. Haney its appreciation of his services as a commissioner of the board and its regret at the severance of the most pleasant personal and official relations which its members have enjoyed with him as a colleague; and be it further

Resolved, That this resolution be spread upon the minutes of the United States Shipping Board and that an engrossed and autographed copy thereof be sent to Mr. Haney.

REPORTS OF COMMITTEES

Mr. PINE. From the Committee on Military Affairs I report back adversely the bill (S. 1024) for the appointment of William Joseph Martin as captain in the Judge Advocate General's Department, United States Army.

Mr. WADSWORTH. I move the indefinite postponement of the bill.

The motion was agreed to.

Mr. SACKETT, from the Committee on the District of Columbia, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

A bill (S. 2852) to provide for the grading and maintenance of the Virginia State highway through the District of Columbia workhouse and reformatory reservation at Occoquan, Va. (Rept. No. 377); and

A bill (S. 2982) to provide for the conveyance of certain land owned by the District of Columbia near the corner of Thirteenth and Upshur Streets NW., and the acquisition of certain land by the District of Columbia in exchange for said part to be conveyed, and for other purposes (Rept. No. 378).

Mr. BINGHAM, from the Committee on Commerce, to which was referred the bill (H. R. 8771) to extend the time for commencing and completing the construction of a bridge across the Detroit River within or near the city limits of Detroit, Mich., reported it with amendments and submitted a report (No. 379) thereon.

Mr. REED of Missouri. From the Committee on the Judiciary, to which was referred the bill (S. 2858) to fix the salaries of certain judges of the United States, I report it with an amendment.

I reserve the right to file a formal report. I am reporting this bill, Senate bill 2858, in the form of a substitute by the committee for the bill I introduced and which was before the committee.

The PRESIDING OFFICER (Mr. BINGHAM in the chair). Without objection, leave is granted, and the report will be placed on the calendar.

Mr. CUMMINS, from the Committee on the Judiciary, to which were referred the following bills, reported them severally without amendment:

A bill (S. 2763) to amend section 103 of the Judicial Code, as amended;

A bill (H. R. 120) fixing the fees and subsistence allowance of jurors and witnesses in the United States courts; and

A bill (H. R. 290) to amend section 99 of the act to codify, revise, and amend the laws relating to the judiciary, and the amendment to said act approved July 17, 1916 (39 Stat. L. ch. 248).

ENROLLED BILL PRESENTED

Mr. GREENE, from the Committee on Enrolled Bills, reported that on to-day that committee presented to the President of the United States the enrolled bill (S. 1430) to establish a board of public welfare in and for the District of Columbia, to determine its functions, and for other purposes.

INVESTIGATION BY THE PUBLIC LANDS COMMITTEE

Mr. KEYES. From the Committee to Audit and Control the Contingent Expenses of the Senate, I report back favorably without amendment the resolution (S. Res. 159) continuing in force until the end of the Sixty-ninth Congress Senate Resolution 347, agreed to last March.

Mr. CAMERON. I ask unanimous consent for the immediate consideration of the resolution.

The resolution (S. Res. 159), submitted by Mr. CAMERON on February 24, 1926, was read, considered by unanimous consent, and agreed to, as follows:

Resolved, That Senate Resolution No. 347, agreed to March 4, 1925, authorizing the Committee on Public Lands and Surveys, or any subcommittee thereof, to investigate all matters relating to national forests, forest reserves, and other lands withdrawn from entry, hereby is continued in full force and effect until the end of the Sixty-ninth Congress, the expenses to be incurred under authority of this continuing resolution to be paid from the contingent fund of the Senate, but not to exceed the sum of $5,000.

INVESTIGATION OF INTERNAL REVENUE BUREAU

Mr. COUZENS. I ask unanimous consent to have placed in the RECORD at this point an article which appeared in the Dearborn Independent concerning the work of the special committee that investigated the Internal Revenue Bureau.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

GOVERNMENT LOSES TAX MILLIONS—SOME OF THE FACTS DISCLOSED BY THE SELECT COMMITTEE'S REPORT TO CONGRESS

By Charles B. Brewer

An astounding report has been returned to Congress by the select committee which was authorized in March, 1924, to investigate the Bureau of Internal Revenue. The work was threefold, comprising (1) the administration of the prohibition laws, (2) a statistical inves-

tigation to ascertain the cause of the marked year-to-year variation in taxable income, and (3) the administration of the income and estates tax. The committee declares:

"There has been *gross discrimination* in arbitrarily allowing amortization for reduced postwar cost of replacement in some cases and in denying it in others similarly situated. * * *

"Mr. Greenidge (head of the engineering division of the Income Tax Unit) appears to be *ill-informed* as to the work under his jurisdiction, *incompetent*, and *generally unfit* for any position in the Government service requiring the exercise of engineering ability and sound discretion.

"There appears to be a growing tendency by authorities superior to the appraisal section chiefs to make a production record, *regardless of principle*, and to give *persistent and influential taxpayers* anything required to reach a settlement. * * *

"All amortization allowances exceeding $500,000 have been reviewed by the committee's staff *and improper allowances in this class alone appear to amount to $210,665,360.40. The tax on about two-thirds of this amount can be saved to the Government by prompt action of Congress.*" (The above italics are ours.)

Most of the abuses which occur in tax matters are made possible by the deep secrecy which covers all tax actions. Whose purpose does secrecy serve?

The Senate committee investigating tax matters showed that *secrecy as to names and amounts was inconsequential* as compared with *other forms which secrecy has taken.* The report of this committee showed:

(a) That five-sixths of the 20,311 rulings applicable to income taxes are kept secret (pp. 7 and 237).[1]

(b) That rulings settling cases were unavailable as precedents even to those who should apply them;

(c) That gross discrimination in applying principles differently to similar cases was prevalent (pp. 7 and 144);

(d) That failure of taxpayers to claim what was rightfully their exemptions followed (p. 7);

(e) That taxpayers were thus forced to engage former employees of the department to get what the law intended should naturally be every citizen's right (p. 237);

(f) That the effect was to place a premium on the services of ex-employees, who artificially profited thereby (p. 7);

IMPORTANCE OF ACCURACY IN TAX DATA

(g) That the filing of claims, which grew between March, 1924, to March, 1925, from over 93,000 to over 254,000, was another of the inevitable results (p. 239).

If precise information ever was necessary to people or firms whose financial interests are vitally affected, it is on income-tax requirements. There is scarcely a subject, however, upon which there is a greater diversity of opinion. In what is probably as intricate a piece of legislation as was ever enacted, and as to which there was a crying need from the public for advice, it is found that dissimilarity of interpretation seems to have been the rule. Forming, as it does, an important part of the greatest financial undertaking in the history of the world, a slight difference in interpretation of a single item in a single account often means millions of dollars. Who passes on such questions? The report says: "Discretionary power vested in the commissioner is actually exercised by division heads * * * governed by no adequate rules or instructions" (p. 6) with "almost unlimited discretion to be secretly exercised (p. 8).

What happens may be seen by following a single subject—amortization, which means, briefly, plant and equipment added for war purposes after April 6, 1917, the usefulness of which ended or was diminished when the war ended, and for which the law permitted a decrease in tax. Actual cases of interpretations at different times show:

One account:	
Originally claimed	$659,000.00
Finally claimed	10,924,025.52
Finally allowed	8,912,879.00
Another account:	
Originally claimed in 1919	6,852,697.36
Claimed after November, 1921	18,268,435.82
Finally allowed	15,589,614.39

The totals of all accounts listed (which includes those above a half million dollars only) show these are not exceptions.

The total originally claimed was $331,527,046.18.

The total finally allowed was $425,921,945.92 (pp. 176–179).

DEDUCTIONS ALLOWED FOR AMORTIZATION

Yet the Senate committee reported that $117,000,000 of this *was outlawed* (p. 183), and "improper allowances in this class alone appear to amount to $210,665,360.40" (p. 4), and also that "There has been *gross discrimination* in arbitrarily allowing amortization for reduced postwar cost of replacement *in some cases and denying it in others similarly situated*" (italics are ours) (p. 5). That is the charge—*different* rulings on the *same* things.

Though the law provides for a "reasonable" deduction to be allowed for amortization and the Treasury has to decide what *is* reasonable, yet such was the passion for secrecy that on this subject the report states:

"*The solicitors' ruling in this case, published on October 26, 1925, * * * constitutes the first official statement of the principles which are to govern the determination of amortization allowances ever promulgated by the Bureau of Internal Revenue*" (*p. 150*). (Italics per report.)

And, more to the point, the committee stated that this date of October 26, 1925, was:

"*A year and eight months after the close of the period within which amortization allowances could be redetermined*" (*p. 150*). (Italics per report.)

This secrecy does not concern income tax *returns.*

It concerns the *rules* by which returns must be judged.

WHY ARE RULES WITHHELD FROM TAXPAYERS?

This is not a matter of divulging private affairs. It is natural that even those with nothing to conceal should shrink from indiscriminate publication of their private affairs such as the law is written to protect. But it is impossible to conceive what legitimate reason should exist for so withholding from those persons and firms *the rules which will determine how deeply they must dig into their pockets.* The people pay this tax. It is their sovereign right to know how much they must pay and that all shall be treated alike.

Here are instances of dissimilar treatment of similar cases. On pages 185–189 of the Senate report it is stated:

For one firm, $9,913,841.86 tax and *penalty for fraud* was compromised for $2,631,381.81 (p. 185).

For another firm, $1,546,341.03, *another penalty for fraud,* was compromised for $310,000 (p. 189).

For another, $1,888,828.29, *another penalty for fraud,* was compromised for $100,000 (p. 192).

Information as to the first reached the Treasury through an anonymous communication, and led to the discovery (p. 185) by checking of accounts. As to this matter the committee further states:

NINETY PER CENT OF PENALTIES ARE COMPROMISED

"Notwithstanding the fact that this tax was assessed upon *fraudulently concealed* income, it was compromised upon the taxpayer's *unverified* statement as to his ability to pay" (p. 187) (italics are ours), and further shows whether or not the "unverified statement" was correct by adding:

"The stockholders were left with a property which had a market value of $4,113,730.50 at the time the compromise was effected, and which now has a market value of $16,303,544.25" (p. 190). * * *

"Deliberately compromising taxes for less than can be collected is an abuse of discretion. * * * This, the Attorney General has said, the commissioner is not authorized to do" (p. 190), yet "*90 per cent of the fraud penalties are compromised,*" says the report (p. 192).

In addition to the "refunds" of $151,000,000 *allowed* in 1925 and recently published, the total refunds (says the report, p. 193) amounted to $459,090,825.49 from beginning of fiscal year 1921 to April 30, 1925, and there are many other "*credits,*" "*abatements,*" and "*allowances*" *for amortization* and *for invested capital, etc.,* where discretion must be applied which do not enter into these figures because of settlement before such amounts are arrived at.

REFUNDING OF TAXES ILLEGALLY COLLECTED

A taxpayer, therefore, when told by the Senate committee that the huge sum of $459,090,825.49 has been "refunded" has an idea of the amount of discretion which may be applied in such matters, though it is a small measure of such discretion when the full report is studied. It is many times the size, however, of such measure as would be guessed at from a perusal of the annual report of the Secretary of the Treasury. In this refunds are referred to as follows:

"In the foregoing statement of receipts no deductions have been made on account of refunds, which for the fiscal year 1923 were as follows:

Refunded taxes illegally collected, claims prior to July 1, 1920	$71,980,947.24
Refunded taxes illegally collected, 1921	34,502,757.76
Refunded taxes illegally collected, 1922	14,784,563.07
Refunded taxes illegally collected, 1923	2,724,552.87
Total refunds	123,992,820.94

(*Secretary of Treasury's report for 1923, p. 431.*)

It is to be hoped that any taxpayer who derived satisfaction in December, 1923, from being told that so many old debts for "1923, 1922, 1921" and "claims prior to July 1, 1920," had been paid off did not see the next year's report of the Secretary, for there he would have seen:

[1] The minority report states 4,500 rulings were published. This would mean only three-fourths were secret. It adds:

"The bulletins in which rulings are published have contained for the last two years a statement on their covers, as follows:

"'No unpublished ruling or decision will be cited or relied upon by any officer or employee of the Bureau of Internal Revenue as a precedent in the disposition of other cases.'

"Surely everything possible has been done by the bureau to insure the publication of rulings and *to prohibit the settlement of cases in accordance with any ruling not published.*" (*Minority report, p. 20,* CONGRESSIONAL RECORD, *2–6–26, p. 3122.*)

Just what this means except to emphasize how secrecy and not discrimination was encouraged is not clear.

"In the foregoing statement of receipts no deductions have been made on account of refunds, which for the fiscal year 1924 were as follows:

Refunding taxes illegally collected, 1920 and prior years	$29,244,233.15
Refunding taxes illegally collected, 1921	11,854,300.19
Refunding taxes illegally collected, 1922	7,772,246.91
Refunding taxes illegally collected, 1923	4,476,790.98
Refunding taxes illegally collected, 1924 and prior years	83,658,654.42
Total refunds	137,006,225.65

(*Secretary of Treasury's report for 1924, p. 287.*)

Information is lacking as to difference in meaning of years *prior* to 1924 as *tabulated* and "1924 and *prior years*," and as to the necessity for refunds in "1920 and *prior years*," and also refunds in "1924 and *prior years*," since all *prior* years are given. If, however, the taxpayer saw the two reports and had his satisfaction changed to disappointment, his disappointment was doubtless changed to concern last December, when another report was as follows:

"In the foregoing statement of receipts no deductions have been made on account of refunds, which during the fiscal year 1925 were made from the following appropriations:

Refunding taxes illegally collected, claims accrued prior to July 1, 1920	$452,934.42
Refunding taxes illegally collected, 1924 and prior years	[2] 49,209,535.60
Refunding taxes illegally collected, 1925 and prior years	11,945,475.98
Refunding taxes illegally collected, 1926 and prior years	90,301,391.33
Total	151,909,337.33

(*Secretary of Treasury's report for 1925, pp. 375, 376.*)

PUBLICITY WOULD HAVE ARMED THE FARMER

The Senate committee must be correct in the statement that from March, 1924, to March, 1925, progress in a backward direction was shown by an increase in "Returns five years old or older" from 29,576 in 1924 to 31,669 in 1925, and in "Returns three years old" from 93,955 to 254,352 in the same year (p. 239). The same Senate committee also stated, "The unsatisfactory conditions developed by this investigation are the inevitable result of delegation of almost *unlimited discretion to be secretly exercised*" (p. 238). (The italics are ours.) The committee also expressed the opinion that but few of the "unsound settlements" would have been made "*if it were not for the belief that they would never become public.*" (Again our italics.)

Publicity would have armed the farmer and others with valuable information seemingly unknown even to the solicitor.

It has been remarked above that "amortization" formed an allowance for plant and equipment acquired for war purposes. "Whether *land* is a proper subject for amortization under this act may be a debatable subject," said the committee (p. 145). The committee report stated, however (p. 144), "When asked if amortization *could be* applied to land, Mr. Gregg, solicitor for the bureau, answered as follows:

"'No, sir; we have ruled specifically that it does not apply to land (p. 3185).'" The report then gives the names of five firms where it was "*admitted* before the committee *that it had been applied to land* and gives the names of 16 large corporations *where it had also been applied*, and these were named as a limited class where such allowance was over $500,000 in each case (p. 144).

THERE WAS NO REBATE TO THE FARMER

The question *was* ruled on, as remarked by the solicitor, but it was *not consistently ruled on*, as he stated it was, for the committee report states "numerous cases are noted where amortization on land is *denied*," notably in the case of a large concern where it was denied, although the *appraisal showed evidence of a loss* (p. 145).

The report referred to this inconsistency of ruling as "the worst kind of discrimination," and added:

"Millions of dollars have been lost by farmers who purchased lands at inflated war values, but, with the exception of two large sugar companies, no allowances upon farm land have come to the attention of the committee's staff" (p. 145).

There was no rebate to the farmer.

The importance of such allowances is shown by a tabulation aggregating a value of $425,921,945.92 of such as were examined by the committee's staff (p. 146). Over $65,000,000 of *one* class, says the report, were "'purely tentative' and inaccurate" (p. 148); and though the basis of every large allowance theretofore made was condemned by the first authoritative ruling on *another* class, no redetermination was ever attempted—not even for the case ruled on. In fact, the period for redetermination was allowed to expire before the ruling was published (p. 149).

In one of these cases the committee's staff took exception to items which involved a difference in the tax in a single corporation of $21,438,513.69 (p. 149). Representatives of the Bureau of Internal Revenue "conceded" that these "were *made upon a basis condemned* by what was then the only published ruling on the subject," but about which "*an agreement had been made* by the engineers of the Income Tax Unit with this taxpayer whereby it was agreed *that this allowance was a permanently closed matter which would not be reconsidered.*" Yet, immediately after the Senate committee had fully discussed the case, *its reconsideration was ordered* by the commissioner and sent to the solicitor "on 16 questions involving the fundamental principles involved in every amortization allowance" on which the report states "approximately $600,000,000 is allowed before there is any authoritative definition of the principles which are to be applied to its determination (p. 150).

In this connection the committee also drew attention to the fact that "only the most casual examination of these subjects" could be made for the reason that there was a "*time limitation upon the right of this committee to have access to records of the bureau*" (p. 195).

FRAUDS, ABUSES, AND LOSSES IN OTHER DIVISIONS

These words should shame every American who reads them. A committee of the Senate of the United States, reporting the finding of gross discrimination, beaureaucratic control, and violations of the law on the inside of one of the Federal departments, is limited in the time the department will permit it to examine department records. This action was taken against a senatorial committee six months after exactly the same thing happened to a congressional committee which had similarly reported frauds, abuses, and losses in other divisions of the same department handling the Liberty bonds these income taxes are now assessed to pay! (CONGRESSIONAL RECORD, March 6 and March 10, 1925, speeches of Congressmen KING and STEAGALL.)

The charges by the Senate tax committee are specific. They relate to a variety of abuses. They concern many officials. *And they would not exist but for secrecy.* Many of them have been recited but these should not be overlooked:

(a) "The invested capital of this corporation was *illegally inflated* to the extent of at least $45,000,000 for 1917, which *resulted in a loss of tax* to the Government for that year of $1,969,998.62" (p. 199).

(b) "This same $45,000,000 of inflated value was included in the invested capital of *1918 after it was known to the commissioner to be unsubstantiated and excessive, after it had been deducted from 1919 invested capital as excessive, and over the protest of" two section chiefs and "resulted in a loss of tax for 1918* of $2,506,648.56" (p. 199). (Italics are ours.)

(c) "The property (referred to in last two paragraphs) was included in invested capital * * * of $90,000,000 in direct violation of the 1917 act" (p. 200).

(d) "The valuation of this property at $90,000,000 was excessive by at least $45,000,000" and "was allowed to stand for 1918 by the express order of the Secretary of the Treasury (3372) of March 6, 1924" (p. 200).

THEIR POLICY TO DISCOURAGE SUCH PROTESTS

(e) "The committee on appeals and review allowed a value of (in 1922 in another case) $2,256,930.48 in excess of the maximum fixed by the 1917 act." This action, states the report, by "the committee of appeals and review, in an unpublished ruling and without giving notice or opportunity to be heard to the engineers who were familiar with the case and who had placed a much lower value on same" (pp. 200, 201). (The value fixes the allowance. The greater the allowance, the less the tax.)

(f) "Thus," reads the report in concluding remarks in another case, "in the month of June, 1922, the Commissioner of Internal Revenue, against the advice of the solicitor, grants a refund of $3,035,771.55 * * * and in the same month publishes a cumulative bulletin proclaiming that such a thing can not be done under the circumstances in this case. From the solicitor's memorandum (addressed to the commissioner) it also appears that the tax on $11,500,000 of profit is also waived 'as a matter of policy' although the legality of the tax is not questioned" (p. 205).

MORE SECRECY. WHAT HAPPENS IF EMPLOYEES TELL THE TRUTH

(g) "It has been and now is the policy of the Commissioner of Internal Revenue to discourage such protests and to make examples of subordinates who make them" (p. 225).

WHAT THE DIVISION HEAD DID

"Such protests" referred to several cases where integrity was crushed. Employees who would not be parties to shady transactions resigned or were discharged and other employees, who discovered fraud in the tax of the favored and sought to remedy it, saw their protests intercepted in a division chief's office and diverted until, at a secret meeting with the fraudulent taxpayer, a reduction from $571,492 to *$82.16* was arranged and accepted and afterwards set up as a bar to prevent the collection of the fraudulently concealed tax (pp. 225 to 229 and 2146). About one of such cases, the report pertinently remarks:

"The division head took the case away from the auditor and closed it * * *. There is no way for this case to come to the attention of any higher authority unless the auditor had protested over the head

[2] Includes $17,777,642.45 refunded as a 25 per cent reduction under provision of section 1200, revenue act of 1924."

of his division chief. The efficiency rating of this auditor, his chances of promotion, and liability to discharge were all under the absolute control of this division head, and if this auditor had any desire to hold his position, to say nothing of being promoted, it was necessary for him to keep quiet" (p. 225).

And in *another* employee's case with *another* division head the Senate committee adds:

"Mr. Briggs filed a protest against the determination of the committee on appeals and review in the X case and against the action of the conferee in the Y case * * *. After the X case and the Y case were presented to this committee, they were ordered reconsidered by the commissioner and upon reconsideration, Mr. Briggs was sustained * * *. Mr. Briggs's protests in these cases saved the Government an immense amount of tax. *He was summarily dismissed* on April 23, 1925, *in the interest of economy*" (p. 226).

The Senate committee adds, further:

"This investigation disclosed the fact that the chiefs of the *metals, coal,* and *timber* valuation sections of the engineering division were exceptionally capable men who have consistently tried to protect the Government from the unsound bargaining policy in the Income Tax Unit. Since the conclusion of our hearings, every one of these men has been removed from the executive position he held" (p. 226).

Still another employee, Mr. Daniel F. Hickey, attorney, in affidavits introduced by Senator NORRIS (CONGRESSIONAL RECORD, February 8, 1925, pp. 3202-3208) gave examples of fraud, favoritism, and collusion of which a superior admitted knowledge but plead compulsion from "higher-ups." The following sentences are in one of the affidavits:

"Even though I reported about a dozen cases of fraud to the commissioner, even though the intelligence unit agreed with my representations, even though in several cases the solicitor agreed with me, the *men who perpetrated the frauds were kept in their high positions* and I was transferred. They did try to get me out of the way, but they did not dare to fire me. I resigned." (CONGRESSIONAL RECORD, February 8, p. 3204.)

Senator NORRIS exhibited these sentences in his plea to permit proper examination of income tax reports. The apparent purpose was to make distasteful anything which might interfere with secrecy.

But the "master's voice" had spoken. Deaf to the record of fraud, favoritism, and corruption, the Senate voted to intrench secrecy.

And this committee might also have added, had they known the facts, stated on the floor of Congress to have come from a present Assistant Attorney General, that the tentacles of the greatest Secretary of the Treasury since Hamilton have reached into the department which has control of the administration of justice to have appointment made of those supposed to prosecute liquor cases in his Pittsburgh district and to have discharge meted out to another in this same Department of Justice because he dared to examine fraudulent Liberty bond matters though ordered so to do by two Presidents of the United States—and this, after a select committee of the Congress of the United States, solely on Treasury records and testimony of Treasury officials and employees, made a vigorous protest (H. Rept. No. 1635, 68th Cong., 2d sess).

BILLS AND JOINT RESOLUTION INTRODUCED

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. BRUCE:

A bill (S. 3559) to incorporate Strayer College; to the Committee on the District of Columbia.

By Mr. COUZENS:

A bill (S. 3560) to authorize the granting of leave to ex-service men and women to attend the annual convention of the American Legion in Paris, France, in 1927; to the Committee on Civil Service.

By Mr. OVERMAN:

A bill (S. 3561) granting an increase of pension to Bessie B. H. Cotten; to the Committee on Pensions.

By Mr. ROBINSON of Arkansas:

A bill (S. 3562) to amend section 6 of the act of May 29, 1884, entitled "An act for the establishment of a Bureau of Animal Industry, etc."; to the Committee on Agriculture and Forestry.

By Mr. FLETCHER:

A bill (S. 3563) to repeal the clause at the end of section 6 of the act of Congress, 1884 (23 Stat. 31); to the Committee on Agriculture and Forestry.

By Mr. NEELY:

A bill (S. 3564) for the relief of the trustees of the Presbyterian Church at Keyser, formerly New Creek, W. Va.; to the Committee on Claims.

A bill (S. 3565) granting an increase of pension to William L. Faucett; and

A bill (S. 3566) granting an increase of pension to Georgiana Harden; to the Committee on Pensions.

By Mr. SMOOT:

A bill (S. 3567) further to assure title to lands designated in or selected under grants to the States, to limit the period for the institution of proceedings, to establish an exception of lands from such grants because of their known mineral character, and for other purposes; to the Committee on Public Lands and Surveys.

By Mr. BUTLER:

A bill (S. 3568) for the relief of James M. Thomas; to the Committee on Naval Affairs.

A bill (S. 3569) for the relief of Chester W. Nichols; to the Committee on Claims.

By Mr. CARAWAY:

A bill (S. 3570) for the relief of O. H. Chrisp; to the Committee on Claims.

A bill (S. 3571) for the relief of Ada Brown-Hopkins; to the Committee on Public Lands and Surveys.

By Mr. MAYFIELD:

A bill (S. 3572) granting an increase of pension to Charles W. Anderson; to the Committee on Pensions.

A bill (S. 3573) to amend the Judicial Code, as amended, in respect to venue for conspiracy cases; to the Committee on the Judiciary.

By Mr. KING (by request):

A bill (S. 3574) to provide for the deportation of certain alien seamen, and for other purposes; to the Committee on Immigration.

By Mr. FESS:

A joint resolution (S. J. Res. 72) declining a bequest to the United States by the late Wesley Jordan, of Fairfield County, Ohio; to the Committee on the Judiciary.

DEPENDENT CHILDREN IN THE DISTRICT

Mr. WADSWORTH submitted an amendment intended to be proposed by him to the bill (S. 1929) to provide home care for dependent children in the District of Columbia, which was ordered to lie on the table and to be printed.

DESIGNATION OF STATE HIGHWAYS

The VICE PRESIDENT. Concurrent and other resolutions are in order.

Mr. TRAMMELL. I submit a Senate resolution, which I send to the desk. I ask that the resolution may be read and lie over under the rule.

The resolution (S. Res. 169) was read and ordered to lie over under the rule, as follows:

Resolved, That the Bureau of Public Roads, Department of Agriculture, be, and is hereby, requested to make no change in the marking and designating of interstate public highways which would bring about a discontinuance of the designation and marking of said highways by names as heretofore adopted.

CLAIMS OF NEUTRALS AGAINST GREAT BRITAIN AND FRANCE

Mr. BORAH submitted the following resolution (S. Res. 170), which was referred to the Committee on Foreign Relations:

Whereas the claims of American citizens against Great Britain and France arising out of violations of the rights of neutrals between August 1, 1914, and April 6, 1917, have not yet been brought to settlement: Therefore be it

Resolved, That the Secretary of State be requested, if not incompatible with the public interests, to inform the Senate what steps he is taking to negotiate claims conventions with Great Britain and France for the arbitration and settlement of the claims above mentioned.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its clerks, announced that the House insisted upon its amendments to the bill (S. 2673) to amend the act approved June 3, 1896, entitled "An act to establish and provide for the maintenance of a free public library and reading room in the District of Columbia," disagreed to by the Senate, agreed to the conference requested by the Senate, and that Mr. ZIHLMAN, Mr. KELLER, and Mr. BLANTON were appointed managers on the part of the House at the conference.

The message also announced that pursuant to the provision of House Concurrent Resolution No. 4, providing for a joint committee to conduct negotiations for leasing Muscle Shoals, the Speaker had appointed Mr. MORIN, Mr. JAMES, and Mr. QUIN as members of said committee on the part of the House.

SPEECH OF SENATOR BORAH ON EDUCATION CONTROL

Mr. COUZENS. I ask unanimous consent to have published in the RECORD a speech by the senior Senator from Idaho [Mr. BORAH] on the question of education control, which he made at Lynchburg, Va., on the 12th instant.

There being no objection, the speech was ordered to be inserted in the RECORD, as follows:

BORAH ASSAILS UNITED STATES EDUCATION CONTROL—SENATOR FROM IDAHO ADDRESSES RANDOLPH-MACON WOMAN'S COLLEGE, LYNCHBURG—OPPOSES BUREAU PLAN—DECLARES QUESTION BELONGS TO STATES AND NOT TO FEDERAL GOVERNMENT

LYNCHBURG, VA., March 12 (Special).—United States Senator WILLIAM E. BORAH, of Idaho, delivered an address at Randolph-Macon Woman's College to-night, speaking on the proposed Federal department of education, which he opposed.

He said, in part:

"Once you establish a Federal department of education and in a startlingly brief time it will come to dominate completely and in detail your States in matters of education. That is the unbroken history of Federal bureaus. They may tell you such is not the purpose, and in that they may be perfectly sincere when they so declare. But they are uninformed as to the philosophy of centralization, its inevitable tendencies, its imperious qualities. They have not familiarized themselves sufficiently with the history of these Federal agencies.

MEANS GREAT FEDERAL POWER

"The principle once admitted, the agency once established, the Federal power will ultimately direct, guide, dictate, and control the whole educational system from the mother's knee to the final departure from the campus. Indeed, that was the original conception of the Federal plan. The original plan and arguments contemplated exactly that, to wit, that the National Government should be omnipotent in educational affairs.

"We were to have uniformity, the dead level of uniformity. We were to have Washington as the source of systems, the one leader in matters of education. We were to have a national system originating in Washington and nothing in all the Union was to be found out of harmony with it. It was to be imposed upon every community in the broad land. It was aroused public opinion which modified the scheme.

WARNS AGAINST BEING MISLED

"But once established it will soon correspond in full with the original idea. Let no one be misled. A Federal department of education means Federal control of educational affairs. Those who do not want that should not be beguiled into the belief that that is not to be the ultimate achievement. It does not matter how modestly is your beginning, nor how profuse the promises, every State and every institution of learning will feel the compelling force of bureaucratic power.

"The growth of bureaucracy in this country must be a matter of deep concern to everyone who still believes in free institutions, who would like to retain some of the principles with which, as a Government, we started. There is scarcely an activity of body or mind but is either already, or proposed to be, brought under the surveillance of the Government through some bureau.

BUREAUCRATIC CONTROL BAD

"I have seen a list of measures now pending before Congress in which it is proposed in some way to establish further bureaucratic control. Anyone who will examine these bills will find that the restless legislative mind does not propose to leave any activity, any business, free of governmental direction and surveillance. Bureaucratic control is bad at best. But it is peculiarly vicious when it takes over and places under national control those things which ought to remain with the State, and that is its inevitable tendency.

"If departments and bureaus established at Washington would be content to deal with purely national problems, the situation might be endured. But the first move of these bureaus is to reach for those things which are distinctly personal and distinctly local. They feel an uncontrollable desire to look after individual interests and to direct personal affairs. They draw to the National Government and place under national control matters which should be dealt with by the State and which can only be successfully dealt with by the State.

CROWDS PAY ROLLS

"These bureaus therefore become the great agencies of centralization. They crowd into Congress and into the Capitol at Washington every conceivable matter of public and private concern. Instead of imbuing the citizen with a sense of responsibility and arousing within him interest in public matters, they would undermine and destroy both. Bureaucracy crowds the pay rolls. It would put the citizen in a straitjacket. Its natural tendency is to destroy initiative, self-reliance, and individual courage, the great qualities of American citizenship. It is wasteful, extravagant, and demoralizing. It is the creeping paralysis of democracy. Good citizenship, self-helping citizenship, and representative government demand that we place a limit to this tendency, that we stay its progress and establish some point beyond which it can not be permitted to go.

"Above all things, it should not be permitted to dominate our educational system. In the training of the mind and the building of character, in training men and women for citizenship, we want the local coloring, we want initiative, tolerance, variety, individuality. We want mind and soul and not mere mechanical direction. We want liberty of thought, freedom of opinion. We want that contrariety of view and that individuality which gives strength and health to our national life and intellectual force to our people.

HOPES STATES WILL KEEP CONTROL

"I hope, therefore, we will leave our educational system under the control of the States and as nearly as may be in touch with the home. Leave it where the people will be found in close contact and where there will be every tendency to keep alive a keen interest and a deep sense of responsibility upon the part of the whole people. In matters of education there should be neither governmental monopoly nor the deadening uniformity of bureaucracy.

"This Government depends at last upon the intelligence and character of the average citizen. His constant, vigilant interest in public matters is indispensable to the success of this great experiment. The idea that the Government should be a universal provider and guarantor against all risks and wants of human existence is at war with our whole theory of government. The theory that there is a wisdom at Washington with reference to purely personal and local concerns superior to the wisdom found at home and in the communities or the States is not the theory upon which our Government was organized."

ORDER OF BUSINESS

The VICE PRESIDENT. The calendar under Rule VIII is in order.

Mr. WALSH obtained the floor.

Mr. WILLIS. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from Ohio?

Mr. WALSH. I yield.

Mr. WILLIS. It is with great diffidence that I submit the suggestion I am about to make to the Senator from Montana. I recall that he gave notice of the address which he desires to deliver this morning, but I am wondering if the Senator would not permit us to work on the calendar for a while. We have a long calendar of rather important measures, and the only time we can get them up is at this hour, as the Senator knows. So I wonder if the Senator would not consider postponing the delivery of his address until after we have worked on the calendar for a time?

Mr. WALSH. Mr. President, it is now a quarter after 12 o'clock, and I feel sure that I shall conclude my remarks at least by 1 o'clock; so there will still be an hour to work on the calendar. I should prefer to go on at this time.

Mr. WILLIS. Of course, I recognize that the Senator can proceed; no one wishes to object; only I am very anxious to secure consideration of some of the measures on the calendar.

Mr. WALSH. I am sure that there will be an hour remaining for the calendar after I shall have concluded my address.

Mr. PITTMAN. Mr. President, will the Senator from Montana yield to me?

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from Nevada?

Mr. WALSH. I yield.

Mr. PITTMAN. Mr. President, I had desired to discuss the long and short haul bill, which is now the unfinished business, this morning, but the Senator from Montana had given notice of his intention to discuss another subject. There are some other matters which I believe Senators have expressed a desire to discuss to-day; so, with the permission of the Senate, I shall discuss the unfinished business upon convening to-morrow morning or as soon thereafter as possible when it may be convenient to the Senate for me to do so.

SENATOR BURTON K. WHEELER

Mr. WALSH. Mr. President, on the 22d day of January, 1926, the time expired within which the Government might take an appeal from the ruling of Judge Bailey of the Supreme Court of the District of Columbia sustaining the demurrer to the indictment returned in that court a year ago against my colleague, Senator WHEELER. Thus there is brought to an inglorious end the effort of the Department of Justice to punish a Member of this body for daring to assail it in the discharge of his official duties and in retribution for his exposure of such misdeeds and associations on the part of the head thereof the Attorney General of the United States which forced his retirement from public office.

Whatever may be said in criticism of the method that was pursued or the character of the witnesses of which he made use, few, if any, will venture to deny that Senator WHEELER rendered an invaluable public service in forcing and conducting the investigation which occasioned the prosecution against him.

The President of the United States admitted as much when he called for the resignation of Harry M. Daugherty, impelled

by the revelations of the depravity of his associates, and every doubt has been dispelled since that gentleman declined to testify before a grand jury concerning his official acts on the ground that his evidence might incriminate him.

The circumstances under which the criminal proceedings against Senator WHEELER were instituted and the issue thereof, must convince the most skeptical that they were inspired by personal and partisan malice, that they constituted a plain case of political reprisal, having for their immediate purpose to arrest the investigation in which he was then engaged and to bring into disrepute it and other like inquiries being conducted by the Senate, and remotely to serve as a warning to any Member of this body who might be moved to expose corruption or malversation in the public service. It is as a breach of privilege of the Senate of the United States that I present the subject to-day. How many among us will care to incur the displeasure of the Department of Justice if it may with impunity employ perjured testimony to wreak its vengeance on those who thus dare? I propose to demonstrate that that is just what it did in the case of my colleague, Senator WHEELER.

It will be recalled that while he was acting as "prosecutor," so called, of the special committee to investigate the Department of Justice and had developed a state of venality in that branch of the Government at which the country stood aghast, an indictment charging acts alleged to have been committed more than a year before was returned against him on the 8th day of April, 1924, in the District Court for the District of Montana, the judge of which had recently been appointed upon the recommendation of the then Attorney General, by a grand jury the foreman of which had attained some distinction through the virulence of his political antagonism to Senator WHEELER, the case having been submitted by a United States attorney, likewise an appointee indorsed by the Attorney General and an assistant to him deputed by the department; that Senator WHEELER demanded an immediate trial which was refused upon the ground that the department was still investigating the case and that meanwhile the Senate having, through a committee, examined every witness produced by the department, or who, so far as could be learned, had any knowledge of the facts, completely exonerated him.

After a review of the evidence adduced at the hearing by the chairman of the committee, the senior Senator from Idaho, who declared that there was none that would justify an inference of guilt, the report of the majority, for which he spoke, was adopted, there being but four dissenting votes. Among them was one cast by the senior Senator from South Dakota, who submitted a minority report, but who would go no further in debate than to assert that, in his opinion, there was evidence before the grand jury affording reasonable cause to believe the Senator guilty. He expressed no opinion as to whether the evidence pointing to guilt had not been satisfactorily explained and every inference of guilt dissipated before the committee.

Having been denied a prompt trial, his case was set down for September 1, 1924, the very day on which, according to an advertised schedule, he was to open his campaign as a candidate for Vice President by an address in the city of Boston. Having taken counsel, the representative of the Government concluded it would be wiser not to force the trial at that time. The setting was canceled and the case eventually came to trial before a jury which, on the 24th day of April, 1925, promptly acquitted the Senator. The indictment against him charged that he had received and agreed to receive a fee from one Gordon Campbell for representing him in certain matters relating to oil permits before the Department of the Interior. The facts were that he had been employed by Campbell to represent him and did actually represent him in certain litigation before the courts of the State of Montana, Campbell at the same time having other counsel who appeared for him before the department. WHEELER never did, and established to the satisfaction of the jury, as he had before the Senate committee and the Senate, that he had never agreed to do so, either with or without compensation.

Prior thereto the Department of Justice, apparently apprehensive that a Montana jury would not convict, procured an indictment to be returned on the 28th day of March, 1925, against Senator WHEELER and the same Gordon Campbell, with one Edwin S. Booth, Solicitor of the Department of the Interior, in the District of Columbia, charging conspiracy to defraud the United States by attempting to secure for Campbell through dummy entrymen a greater acreage of oil permits than the law entitled him to hold.

It may be recalled that the grand jury for the District, having been engaged for some time in taking evidence of witnesses concerning the transaction made the basis of the indictment last referred to, being the witnesses almost without exception or addition who were called before the Senate committee, and after Senator WHEELER, on the invitation of the Attorney General, had appeared before and told his story to them, adjourned and reassembled after about 30 days, when, as I am informed, George B. Hayes, hereafter mentioned, was produced and testified in substance, as he afterwards did on the trial of the indictment in Montana, as hereinafter related, no opportunity having been afforded Senator WHEELER to know either of his appearance or of the nature of his testimony before the grand jury.

It was afterwards admitted in that proceeding that the transaction giving rise to it was identical with that upon which the Montana indictment was based; the overt acts charged consisted largely of the sending and receipt of telegrams and letters introduced in evidence by the Government in the Montana trial; all of which it was the plan of the Government to offer on the trial in the District, with a purpose to show, as it attempted to show in Montana, that Senator WHEELER had agreed for a consideration to assist Campbell before the department and, a circumstance not necessary to be shown under the Montana indictment, that he knew the applications to be fraudulent. In other words, it was proposed to try him twice for the same offense, the same offense in fact, however it may be under the technicalities of the law of former jeopardy.

It was conceded by the Attorney General that the indictment might with equal propriety be brought in Montana, the Federal court in which had jurisdiction concurrent with that of the District of Columbia, for though the conspiracy was alleged to have been entered into in Montana some of the overt acts were laid in the District. The jurisdiction of the courts of the District in such cases had long been contested. The fundamental injustice and oppression of bringing a man from a distant State to the District of Columbia to try him in a community in which the influence of the administration penetrates every walk of life and everyone breathes an atmosphere of adulation of the powers that be has been repeatedly inveighed against. The Supreme Court, however, eventually affirmed the right of those courts to take jurisdiction in such cases, but it said in that connection, (I read from Hyde *v.* Shine, 199 U. S. 75):

> But we do not wish to be understood as approving the practice of indicting citizens of distant States in the courts of this District where an indictment will lie in the State of the domicile of such person unless in exceptional cases where the circumstances seem to demand that this course shall be taken. To require a citizen to undertake a long journey across the continent to face his accusers and to incur the expense of taking his witnesses and of employing counsel in a distant city involves a serious hardship to which he ought not to be subjected if the case can be tried in a court in his own jurisdiction.

It will puzzle anyone to spell out the extraordinary circumstances which made resort to the courts of the District in this instance either imperative or justifiable.

A demurrer to that indictment disposed of it, the court holding that even if all the facts charged were true no crime had been committed by any of the defendants. An appeal would lie from the ruling of the court but none has been taken, the department evidently reaching the conclusion that in its eagerness to "stick" Senator WHEELER it had arrived at a too hasty conclusion on the law to which it appealed.

To return to the Montana trial. In his opening statement to the jury the district attorney told them a witness would be produced who would testify to a conversation with Senator WHEELER in which he offered to divide with the witness, a lawyer, a very large fee which he, WHEELER, was to receive from Campbell for representing him in the matter of oil permits before the Department of the Interior, if the witness would appear for him, WHEELER, who explained, as it was stated, that being a Senator he could not himself do so. No such testimony was adduced, no such witness appeared before the Senate committee. Counsel for the defendant had never heard such a charge made. Correspondents for the metropolitan newspapers present at the trial in considerable numbers, who were conversant with the affairs since its inception, were entirely ignorant of it or of the witness referred to. Speculation aided by lists of prospective witnesses found in newspaper reports and prepared from subpœnas issued from the office of the clerk of the court afforded but a single clue, which, being followed, disclosed that the witness to whom it led would not so testify. One of the counsel for Senator WHEELER waited upon the district attorney and requested to be informed as to the identity of the witness promised. No information was vouchsafed. The newspaper reporters were unable to elicit any, try as they might. The trial proceeded for some days, the evidence submitted being substantially like that adduced before the Senate committee. Not all the wit-

nesses heard before the committee appeared, but the facts of the transaction were detailed in substantially the same language. A few witnesses who told of minor details of no great consequence were heard. Otherwise the same story was told. A request for a directed verdict had been prepared, counsel being mindful of the view expressed by Senator BORAH when in reviewing the evidence taken by the Senate committee he said:

Mr. President, there is not even a conflict of testimony here, and I have left out entirely the statement of Senator WHEELER. His statement adds conclusiveness, but, leaving that aside, I submit the evidence seems conclusive.

I repeat, that upon the testimony of disinterested witnesses, Mr. WHEELER is perfectly clean of any condemnation under the statute.

The conclusion was indulged that the district attorney had been imposed upon by some romancer and had found himself unable to produce the mysterious witness, when lo! a stranger was called to the stand. He gave his name as George B. Hayes, a lawyer, residing and practicing in the city of New York. He proceeded to tell that on or about the middle of March, 1923, between the hours of 4 and 7 p. m., he met with Senator WHEELER in the lobby of the Waldorf-Astoria Hotel in that city, having been advised theretofore by one Edwin S. Booth, before referred to, over the telephone that WHEELER was to be there on that day, having arranged to sail for Europe on the day following; that there ensued a conversation quite like that which the district attorney asserted in his opening statement he expected to prove, as heretofore detailed, the witness adding that WHEELER assured him, the witness, that "there are millions in it." On cross-examination the witness stated that he had not been subpœnaed, having arranged with the department in Washington to attend when called; that he had never met Senator WHEELER prior to the occasion of which he spoke and was unaware that the gentleman he was to meet was a United States Senator; that he, the witness, had no familiarity with the public land laws in general or with the oil leasing law in particular or with the practice before the Department of the Interior, and had no experience before that department except that he had been interested in one application pending there under the war minerals relief act.

In substantiation of the accuracy of my review of the testimony of Hayes and of that part of the statement of the district attorney in relation to the same, I send to the desk the stenographic report of both and ask that it be printed in the RECORD as an appendix to my remarks.

The VICE PRESIDENT. Without objection, it is so ordered. (See Appendix.)

Mr. WALSH. Senator WHEELER denied point-blank that he had met Hayes on the occasion mentioned, or had ever had any talk with him or seen him or heard of him, except that some 12 months after the eve of his departure for Europe, while conducting the investigation of the Department of Justice, Hayes being called as a witness was introduced to him by his assistant, one A. B. Melzner, whose duty it was to interrogate the witnesses and brief their evidence for use at the hearing, Hayes afterwards testifying concerning a bootlegging transaction under inquiry by the committee. Fortunately it so chanced that Melzner, a highly reputable lawyer of Butte, Mont., to whose character and trustworthiness I am myself able to attest from an acquaintance of many years, a close friend of WHEELER, being on his way from New York to the coast, stopped off at Great Falls to attend the trial. Being called to the stand he told that on Hayes's appearing in obedience to a subpœna issued by the Senate committee he (Melzner) questioned him concerning the transaction in relation to which it was expected he could testify and having secured his story asked him if he had ever met Senator WHEELER, to which he replied that he had not, whereupon Melzner offered to accompany him to the committee room and introduce him to WHEELER, which he did. The press having carried information of Hayes's testimony, another aid to Senator WHEELER as "prosecutor" for the Senate committee, Henry Stern, of Buffalo, N. Y., wired promptly to the Senator from that city that he had read such press reports and that he recalled distinctly Melzner's asking Hayes whether he had ever met WHEELER and Hayes's reply that he had not. Booth denied that he had conversed over the telephone with Hayes touching a meeting between him and WHEELER.

While the evidence for the defense was being submitted, inquiries by wire of friends in the city of New York brought the information that witnesses were on the way to Great Falls, including one of the assistants to the district attorney, qualified to testify to the reputation of Hayes for truth, veracity, and integrity, and that it was bad. The testimony for the defense, save for that of such witnesses, however, being concluded, it was determined that the case might safely be submitted without theirs, and it was. The jury on retiring went to dinner and within a few minutes after their return reported an agreement and returned a verdict of not guilty, without discussion, it was reported, and arrived at on the first ballot.

Senator WHEELER told on the stand that having suddenly determined to sail for Europe, he wired his wife at Butte, asking her to join him. She left immediately for New York, where she arrived Friday morning, and as they were sailing next day, and she in need of clothes appropriate to the trip, they were out shopping all day, and that returning to the hotel they went directly to their room to dress for an early dinner to which they were invited and from which their host took them to a theater. Unfortunately, Mrs. Wheeler was ill in Washington at the time of the trial, so her testimony was not available, but she confirms Senator WHEELER's statement that he did not see and could not have seen Hayes in the lobby of the Waldorf, as testified to by him, as shown by the following affidavit:

DISTRICT OF COLUMBIA, *ss:*

I, Lulu M. Wheeler, being first duly sworn, upon oath depose and say that on the morning of the 16th day of March, 1923, I arrived in New York from Chicago over the Broadway Limited train of the Pennsylvania Railroad and went directly to the Waldorf-Astoria Hotel, where I met Mr. WHEELER and where he had engaged a room for us. We remained at the hotel but a short time, and later in the morning left together to go shopping. We visited many stores, the last one being B. Altman Co., where Mr. WHEELER purchased some shoes. I recall distinctly that we remained in this store until after the doors were closed, which I believe was about 5.30 p. m. We went from Altman's store direct to our room in the Waldorf-Astoria Hotel in order to dress for dinner. Mr. WHEELER never left our room from the time we returned to the hotel until a short time before 7 o'clock, when he and I left together to attend a dinner at the home of Mrs. Griswold. The other guests present at the dinner were Colonel and Mrs. E. M. House, Mrs. J. Borden Harriman, and Colonel Stone, of the United States Army. After dinner we went with the entire dinner party to the Metropolitan Opera House, and did not return to the hotel until nearly midnight. The next morning, March 17, we embarked on the *Roosevelt* for a trip to Europe. From the time I reached the Waldorf-Astoria Hotel on the morning of March 16 until we embarked on our boat for Europe Mr. WHEELER and I were continually together.

Mr. WHEELER could not have met George B. Hayes during that time without my knowledge as we were together continually, and I know he did not meet him while we were in New York in March, 1923, at the Waldorf-Astoria Hotel or at any other place.

LULU M. WHEELER.

Subscribed and sworn to before me this 6th day of January, 1926.

GERTRUDE ELLIS,
Notary Public, District of Columbia.

I have here quite a sheaf of affidavits from persons competent to speak, who assert therein that Hayes's reputation is of the most unsavory character and that his oath is valueless. They are all at the command of the Department of Justice. I shall read but one, from a former employee. It is as follows:

STATEMENT BY A. FURMAN GREENE, 1457 BROADWAY, NEW YORK CITY

I reside at 823 West End Avenue, New York City; my office is at 1457 Broadway, New York City.

I am an attorney at law; was admitted to the bar of the State of Pennsylvania (Philadelphia County), in 1905. In 1918, I moved to New York City, where I became associated with several corporations. In 1921 I was admitted to the New York bar.

Early in 1923 I decided to begin the practice of law in New York. In casting about for a connection with a law office, some one mentioned to me the name of G. B. H. I wrote H. in February of that year and received his reply dated February 11, 1923, asking me to call at his office to see him.

It was afterward explained that "G. B. H." means "George B. Hayes," and "H." means "Hayes."

I called on him the following Monday, in February, 1923, and had an interview with him. At that time he told me that he would consider my application, but could come to no decision until later on. He said he was leaving for Habana, Cuba, in a day or two and would be back on February 21. I called to see him again on February 22. He then said he had just returned; that he was busy preparing for an important trial; and that I would have to see him again. I finally became associated with him on March 26, 1923.

Before that I had called at his office four or five times and found him out during the day, his office informing me that he was trying "the important case." I had to make it a point to be at his office after 5.30 in the afternoon to see him. On one of these occasions H. told me that he was one of the attorneys for the defense in the Hart case, in which former Prohibition Director Hart (of New York City

district) and a number of other defendants were being tried for conspiracy to violate the prohibition laws, that the trial was then in progress, and that he was engaged in court daily and that after court adjourned he conferred with the other attorneys for the defense daily and did not get back to his office until about 5.30 in the afternoon. This trial began about February 25, 1923, and ended about March 24, 1923.

At several interviews before my association with him, H. told me that his practice was principally between various governmental departments in Washington. He pointed to autographed photographs hanging on the walls of his private office of President Harding, Secretary of the Treasury Mellon, Comptroller of the Currency Crissinger, and also the President of Cuba. He said he had very large Cuban matters in hand and that he would have occasion to go to Cuba frequently. His Cuban matters, he said, came to him by reason of his great political influence in Washington which enabled him to exert pressure upon the Cuban officials. He emphasized that he was a very close friend of Secretary Mellon and particularly of Attorney General Daugherty.

When I arrived at his office on March 26 the office manager, Harry Friedman—who, I have since learned, resigned from the bar of New York after charges had been preferred against him and H. by a client of their office—assigned me the task of familiarizing myself with the sugar situation in the United States. H. was in Washington and came back in a day or two. Upon his return he told me that he had conferred with Attorney General Daugherty and other prominent members of the Federal administration and expected to be appointed special counsel to investigate the conditions leading up to the then chaotic conditions of the sugar market in the United States. He stated that his special qualifications, due to his familiarity with Cuban economic matters, together with his influence with Washington officials, would get him the appointment. He wanted me to familiarize myself with the sugar situation so as to become his assistant in the contemplated investigation. He did not get the appointment, as the Government made its investigations through its own officials.

During my association with H. I handled matters principally involving practice before Federal departments—i. e., Federal income tax, customs, prohibition, national banks, and citizenship, also Cuban matters.

We had several appeals from assessments and claims for abatement on behalf of clients, involving large sums of money, pending before the Federal income tax bureaus in Washington. On one occasion I had to go to Washington to argue one of these appeals. H. told me to call on Arthur Sixsmith in Washington, whom he described as Secretary Mellon's chief confidential secretary and as a close friend of H.'s. He said that Sixsmith would give me introductions which would insure favorable consideration of that particular tax matter. He suggested, however, that I exercise caution in urging Sixsmith too strongly to use his influence, as H. was then having troubles with Federal income-tax matters of his own, and that he would need Sixsmith's influence on his own behalf. I called on Sixsmith, but had no courtesies extended by him. Sixsmith seemed to be principally concerned with finding out "where H. was" and "why H. did not call to see him."

I think it was in the fall of 1923 that H. gave me a check on account of money owing to me, which was returned by his bank marked "account attached." H. explained that the internal revenue collector at New York had levied a distraint upon his bank account and other property for Federal income taxes claimed from H. by the Government. He stated that he had not filed income-tax returns for several years, claiming that his "disbursements" had equaled his receipts, and that he, therefore, owed the Government nothing. Several years before he had settled a large claim against the Cuban Government, he said, and had received a fee of several hundred thousand dollars, but that he had had to divide this fee with influential persons in Washington and Habana, leaving little for himself. Nevertheless, the Government assessed him to the extent of between three and four hundred thousand dollars. He had never submitted his books or statements of account in support of any appeal for reduction or abatement of the Government claims, but was depending upon his influence in Washington to remove the pressure of the tax office. What bothered him mostly, he stated, was that the Department of Justice was annoying him with threats of prosecution on the ground that his failure to make tax returns was with the intention of defrauding the Government, in violation of a certain provision of the Federal income tax laws. He urged me to study his case and be prepared to fight it in the event that his influence in Washington failed him. I had no occasion to take any steps in regard to this matter, as it appeared to lie dormant up to the time I left H. in April, 1924. In this connection H. frequently spoke of a quarrel he had had with Internal Revenue Commissioner Blair, whom he blamed for his income-tax troubles. H. stated that his "friend," Attorney General Daugherty, would undoubtedly protect him.

H. always spoke of his influence in Washington. He spoke of it to impress prospective clients and spoke of it to his clients in connection with cases he was handling for them. He often mentioned his political influence to me. He made frequent trips to Washington, and often told me to send papers in certain cases on which I was working to him at his Washington office in the Albee Building, so that he might take up these matters direct with high Government officials. At one time while I was associated with him H. told me he was contemplating giving up his general practice and reducing his office force in New York so as to concentrate upon his work in Washington.

He boasted of intimacy even with President Harding. Mr. Crissinger was then Comptroller of the Currency. H. was often in his company, frequently bringing him into the office. He claimed that Mr. Crissinger, who was a very close friend of the President's, had brought him into close contact with the White House. When President Harding died, H. went to Marion, Ohio, to attend the funeral, and upon his return employed a news-clipping bureau to gather editorial comments on the President, which were collected and placed in book form. He said he did this at the request of the late President's closest friends, thus reflecting his entrée to official circles in Washington.

In March, I believe, of 1924, H. had appeared as a witness before a Senate committee in Washington which was investigating the conduct of Attorney General Daugherty. A former client of H.'s had also testified before that committee and had made disparaging remarks concerning H. One of the things that this man had said—John Gorini—was that H. would sacrifice his mother for a nickel, or words to that effect. When H. returned from Washington I remarked to him that Gorini had shown great bitterness. H. said that the whole responsibility for the Daugherty investigation rested upon Senator WHEELER, and that WHEELER, in his opinion, was seeking to crucify Daugherty in order to exalt his own political position. He spoke of Senator WHEELER in most uncouth terms, and added: "Just wait and see what happens to WHEELER; we'll fix him so that he won't remain in the Senate very long."

It was about a month after this that I left H.'s office, in April, 1924.

Former Judge Hal S. Corbett was associated with H. while I was in that office, and they are still associated. Judge Corbett makes frequent trips to Washington and claims to have many friends there in the Government service. Corbett and H. are very friendly.

On May —, 1925, Judge Corbett called at my office on a business matter. We discussed the recent Wheeler trial and H.'s testimony. Corbett told me that he remembered that he accompanied H. to the Hotel Waldorf-Astoria on the afternoon of March 16, 1924, and that they parted in the lobby of the hotel. Before they separated H. said to Corbett, "I am going to see a man here whom you may know, Senator WHEELER, of Montana, your former home State." Corbett replied, "I don't know the Senator; never saw or met him." But Corbett states he did not see H. again that day.

N. B.—The initials "G. B. H." and "H.," where the same appear in the above statement, refer to George B. Hayes, an attorney at law, of New York City, N. Y.

A. FURMAN GREENE.

Subscribed and sworn to before me on January 28, 1926.

JOSEPH BLUMENFELD,
Notary Public, No. 735, New York County.

(Term expires March 30, 1927.)

Proceedings for disbarment are pending against Hayes before the courts of the State of New York as well as before the Treasury Department, or, at least, complaints looking to his disbarment are on file and were so pending or on file at the time Hayes was sprung as a surprise witness at the Wheeler trial and at the time he was called to the Department of Justice to arrange for his appearance against Senator WHEELER, coming from Cuba, where he told on the witness stand he had been sojourning for some months prior to that time. I have it from perfectly reliable sources, though I am not at liberty to disclose them, that owing to the reputation which preceded him and the associations he cultivated while there he was under surveillance constantly by the authorities. It is established by the records of the office of the clerk of the United States District Court for the Southern District of New York that he has been guilty of falsifying his income-tax returns, four judgments having been entered against him in that court on July 17, 1923, for the aggregate sum of $302,644.72, all of which were unsatisfied when the department so arranged to have him, without advice to the defendant, appear at the trial of Senator WHEELER as the Government was about to close its case.

It was in consequence of disclosures in connection with the inquiry instituted by the Bureau of Internal Revenue, resulting in the judgments mentioned, that that branch of the Government began proceedings to disbar Hayes from practicing before the Treasury Department. Though he was on the 22d day of April, 1925, suspended from so practicing, his name for some unknown reason does not appear either in the list of attorneys against whom orders of suspension have been entered, published in the weekly Internal Revenue Bulletin, or in the list appearing in the last Cumulative Bulletin, in which are published the opinions and rulings of the bureau for January to June, 1925, inclusive.

I presume most Senators are familiar with the weekly bulletins gotten out by the Bureau of Internal Revenue, publishing

the decisions and rulings of the bureau. At the back of each of these weekly bulletins is a list of attorneys disbarred from practicing before the department, or attorneys who have been suspended from practicing while their cases are under investigation, this, of course, for the information of the general public, so that they may not fall into the meshes of these men of established or doubtful reputation. At the end of each six months those names are gathered together and printed in more permanent form, and at the back of these semiyearly bulletins will be found the same list of disbarred and suspended attorneys. While Mr. Hayes was suspended on the 22d day of April last, his name has never appeared in these published lists of suspensions.

Mr. REED of Missouri. Who publishes the lists?

Mr. WALSH. The Internal Revenue Bureau publishes them. That he was suspended I have from the Secretary of the Treasury himself. I am in possession of copies of other records of the courts of the city of New York in which charges are made involving the integrity of George B. Hayes, though I forbear, for the sake of brevity, making them public.

Aside from the abundant evidence of his utter untrustworthiness, his statement concerning his meeting with Senator WHEELER on Friday, March 16, 1923, in the corridor of the Waldorf-Astoria Hotel, is denied by Senator WHEELER and by Mrs. Wheeler, and inferentially by two disinterested witnesses, Melzner and Stern, who say that 12 months afterwards Hayes told them he had never met WHEELER, while Booth denies his assertion that his alleged meeting with WHEELER was prearranged.

But regardless of these denials the story is its own refutation. It is inherently unbelievable. According to it WHEELER, admitting he was engaged in a criminal transaction, proposed to Hayes, whom he had never before met, that he, Hayes, join him in it and representing or acting for him, WHEELER, appear in behalf of Campbell in proceedings before the Interior Department touching claims under the oil leasing law, with which he was entirely unfamiliar, as he was with the public land laws generally, as well as with the practice before the Interior Department.

The jury regarded the tale as incredible. If it imposed upon the assistant to the Attorney General in charge he has not sagacity enough to fill the place he occupies. If the Bureau of Investigation did not apprise him that Hayes was totally unworthy of belief, it ought to undergo a radical reorganization. But if the charitable view be taken that an imposition was practiced upon the responsible officers of the Department of Justice with respect to the character of Hayes or of the testimony he was to give, what excuse, what palliation, can be offered for the studious course of concealment that was pursued with reference to his production as a witness? What conception of justice have those who conceived or carried out such a plan to surprise a defendant charged with a criminal offense, to catch him unawares by springing a witness on him from a remote section of the country just as the evidence against him was about to close and he was required to proceed with his defense? This practice, so much more honored in the breach than in the observance, rare, I venture to believe, in this country, has been roundly denounced by one who from his high official position is entitled to speak for the bar of America. In a public address delivered before the American Bar Association at its annual meeting in September last he said:

> The impression the laity have of us in this regard is, I am sure, much worse than we really deserve; but still is it not true that we often try to get the other side "in a hole"; to produce a witness or a piece of evidence of some kind which is a complete surprise to him, and which in the exigency of the trial he can not meet or explain although there may be some explanation in existence?
>
> A victory won under such circumstances is pretty sure to be set at naught later, and the number of petitions for new trials on the ground of newly discovered evidence is an index of the number of such victories.
>
> It is every lawyer's duty to do his best to win his client's cause; yes, but it is of greater importance that justice be done than that client shall prevail, and I deem it a greater honor to lose a case which, on all the facts in existence bearing on it, ought to be lost, than to win it on part of such facts being shown, with no opportunity for the other side to produce the rest.
>
> In the first place, the last place, and all the places between, it is our duty to the court, and to the cause of truth and justice, to give all the light we can on the merits of the cause.
>
> Again, an opponent who is stripped of the opportunity to say, or appear to say, that he can not meet the evidence against him because it comes as a complete surprise, is at once put in the position of being unable to meet it because it is true and there is no answer to it.
>
> The longer I have practiced law, the more cases I have tried, the more I have become convinced of the advisability of showing all the facts I know of bearing on the issue on trial, whether for me or against me, and, further, of advising my opponents in advance of the substance of what the evidence against them will be.
>
> I know well the answer rising on the lips of many: "You would give an opportunity to manufacture evidence to meet your every proposition."
>
> No; there is very little to be feared from manufactured evidence; its character is almost certain to be revealed, and is deadly poison to the party who uses it.

Who is he who thus voiced these just and high-minded sentiments, you ask? Why, none other than John Garibaldi Sargent, Attorney General of the United States. Some recent developments have led to the conclusion that he is entirely oblivious of much of what is going on and more of what is not going on in his department. If he was ignorant of the accusation by his predecessor made immediately before his accession to the effect that a corporation generally believed, whatever the fact may be, to be controlled by a fellow member of the Cabinet was guilty of contempt of court in a matter of the greatest importance, information of which was carried and abundantly commented on in the press, it may well be that he was equally ignorant of the incident attending the trial of a United States Senator, now being discussed, information of which was given to the general reader in like manner. Were it otherwise, Satan rebuking Sin would be an edifying spectacle compared with the unblushing hypocrisy of his speech.

The story of this prosecution against Senator WHEELER makes a black chapter in the history of American jurisprudence. Happily it has few parallels. My reading has revealed none. We are led to believe that in other countries men in public life who have made themselves obnoxious to the powers that be, run the risk of like treatment before subservient courts. Our liberties have not until now been so imperiled. I look for no division in this body in reprobation of this assault upon its independence, recalling the days of the Stuarts and the Tudors. The offense against the Senate is too flagrant to permit the thought that even partisanship should offer any obstacle to the vindication of its dignity and the demands of justice. I am confident that the President of the United States, being apprised of this effort to pollute the adminstration of justice will, jealous, as he must be, for the honor of his administration, hasten to inquire into the identity of those responsible for it and to act accordingly.

EXHIBIT A

TESTIMONY OF GEORGE B. HAYES

Direct examination by Mr. SLATTERY:

Q. You may state your name to the jury, Mr. Hayes.—A. George B. Hayes.

Q. Where do you reside?—A. New York City.

Q. How long have you lived there, Mr. Hayes?—A. 1897.

Q. Since 1897. And what business or profession are you in?—A. Law.

Q. And how long have you been practicing law in your city?—A. Twenty-five years.

Q. And during that period state whether or not your practice has called you to other points in which you engaged in practice.—A. It has.

Q. And during that period state whether or not you have practiced your profession in the District of Columbia.—A. Not in the courts there, except the United States Supreme Court. I have practiced before some of the departments.

Q. Are you a man of family, Mr. Hayes?—A. Yes, sir.

Q. How many children?—A. Three.

Q. Do you know the defendant, Senator WHEELER?—A. Yes, sir.

Q. When did you meet him?—A. Why, the first time I think was about the middle of March, 1923.

Q. And where did you meet him?—A. The Waldorf-Astoria.

Q. That is, the Waldorf-Astoria Hotel in New York City?—A. In New York—Thirty-fourth Street and Fifth Avenue.

Q. State whether or not your meeting with him was by appointment or otherwise.—A. It was by appointment; yes.

Q. And who made the appointment or arrangement?—A. Mr. E. S. Booth, who was——

Q. Do you know whether or not at that time he was the Solicitor of the Department of the Interior?—A. He was at that time; yes, sir.

Q. How did Booth make this arrangement with you to meet the defendant?—A. The arrangement was made on the phone.

Q. Oh, on the telephone?—A. Uh-huh.

Q. Where were you?—A. I was in New York.

Q. And how long, about, was this arrangement made before you met Senator WHEELER?—A. Why, I was to be in Washington that day, and I telegraphed Booth that I could not be there. Booth had telegraphed me, I think two or three days before, and I replied saying, I would be in Washington on that day. I could not get there; I think I was engaged in a trial of some case or in some court proceeding in New York; and I telegraphed Booth that morning and some time during the day

Booth called me up and asked me if I could meet Senator WHEELER at a certain hour. I can not think what the hour was. It was apparently during the court hours. I replied, no that I would not be at leisure until after 4, and I suggested between 4 and 7. Now, it was some time between that hour. I can not tell you what hour exactly.

Q. I see. Now, how did you come in contact with Senator WHEELER in the Waldorf-Astoria Hotel that day?—A. Well, I had either one or two telegrams that I had received from Booth that week, and I went up to the Waldorf and had him paged.

Q. Had Senator WHEELER paged?—A. Yes.

Q. That is, to have a boy call him?—A. One of the bell boys.

Q. Yes; and did you finally succeed in seeing him?—A. In a few minutes; yes, sir.

Q. Whereabouts in the hotel?—A. Well, I would not be sure. I suppose it was right near the main desk there, because that is where the bell boys congregate.

Q. Now, what conversation, if any, did you have there with Senator WHEELER, the substance of it?

Senator WALSH. Just a moment, if the court please, some statement was made by the district attorney in his opening statement, addressed to the jury, concerning proof that would be submitted, and I suppose probably, I assume, that this testimony is to come from this witness. In my estimation the testimony is inadmissible under the indictment, and I should like to address the court on that matter for a short while, if the jury might be excused.

The COURT. Well, the jury may retire.

JURY OUT

Senator WALSH. The statement to which I refer is as follows: Page 135 [reading from transcript], "Now, the testimony will show you further, gentlemen of the jury, that the arrangement which Mr. Booth attempted to make with this witness"—no; it is the preceding paragraph.

"The evidence will show you, gentlemen, that before Senator WHEELER went to Europe he arranged—he had a meeting with another witness by arrangement with Mr. Booth, and that at this meeting Senator WHEELER told the witness, who was a lawyer, that he would like him to appear in the place instead of Senator WHEELER before the Department of the Interior and the General Land Office regarding Campbell's land difficulties there pending, and told him that there were several matters, several pressing matters before the Department of the Interior with respect to Campbell's acreage, or words to that effect, which needed prompt attention, and he also told this witness that any arrangement which he—which Solicitor Booth, Edwin S. Booth, might make with the witness was satisfactory to him, Senator WHEELER.

"Now, the testimony will show you further, gentlemen of the jury, that the arrangement which Mr. Booth attempted to make with this witness, sought to make with him, was this, that this witness was to appear before the Department of the Interior with respect to rendering services in regard to these permits mentioned in the indictment and before the department in the place and instead of Senator WHEELER, who did not want to appear because he was United States Senator, and that if he would appear in his place and stead he, the witness, would receive 50 per cent of the share which Senator WHEELER was to receive of the proceeds of the lands saved for Campbell or procured for him, and it was represented to the witness by Mr. Booth that his share—that the share of the witness for thus appearing would run into the millions of dollars, and there will be other evidence substantiating that feature of the case, and it is the—the evidence will further show you, gentlemen of the jury, that the completed agreement then between Senator WHEELER and Gordon Campbell was, 'you might say,' of two elements; first, the retainer of $10,000 a year to appear for him in all matters, and, second, that he was to obtain a special share of the proceeds of the value of the lands which he saved for Gordon Campbell and his associates."

That is to say, it is proposed to prove by this witness that Senator WHEELER made an agreement with Gordon Campbell and others for services for which he was to receive $10,000, and in addition to that a share of the properties involved in the controversy. That, if the court please, will be a contract essentially different from the contract charged in the indictment. The indictment charges in the first count that Senator WHEELER entered into the agreement by which he was to receive from the said Gordon Campbell and said divers other persons to the grand jurors unknown, compensation, to wit, a large sum of money. That is the contract, "The exact amount of which is to the grand jurors unknown, for services to be rendered, and so on."

Then, in the second count, the charge is that Senator WHEELER did receive $2,000 in compensation for services to be performed by him, and in the third count it is charged that he received $2,000 for services to be rendered. The second count is that he agreed to receive and the third is that he received $2,000 for services. Accordingly, if the court please, this testimony would tend to prove a contract essentially different from that charged in the indictment, and accordingly would be inadmissible. Of course, that part of the indictment, if your honor please, is vital and essential. We can not be called upon to answer here concerning a contract where one character of service and be confronted with testimony concerning a contract of an essentially different character. The charge is specific. The first count charges the agreement. Now, it is not proposed, as I understand, to prove by the witness the receipt of anything at all, so that the evidence is referrable only to the first count of the indictment, which charges the receipt of a sum of money and the contract that is sought to be proved. The evidence, therefore, would be in proof of an entirely different contract.

The COURT. Objection overruled.

Senator WALSH. Note an exception, please.

JURY IN

The COURT. Read the question, Mr. Reporter.

The REPORTER. Mr. Hawkins, the other reporter, has it, your honor.

The COURT. Well, to save time, Mr. District Attorney, can you restate your question?

Mr. SLATTERY. Yes; I think so.

By Mr. SLATTERY:

Q. Will you state the substance of the conversation which you had with Senator WHEELER in the Waldorf-Astoria Hotel in New York City on or about the middle of March, 1923?—A. It was about some leases, oil leases, I think owned or claimed by one Gordon Campbell, who, as I understand it, resided in Montana. At that time I did not have a list of these leases. I received it subsequently to that. We talked over the matter, and I explained to Senator WHEELER that I knew nothing about oil leases, land contracts, out in this part of the country, and he told me that WHEELER would—not WHEELER but Booth—would render me assistance; as I have already indicated, he had done that; and he asked me if I received a copy of the practice and compilation of statutes with reference to these matters, which Booth had sent to me, and I think I said I had. I told him I thought it would be foolish to retain me; that it would be better to get some one who knew something about the nature of the business, the nature of the practice. He urged on me one matter; said he was leaving, I think, for Europe, the next day, whatever day that was, and there was one matter that was of unusual importance, and he wanted to know if I would consent to handle that matter until I discussed the matter further with Booth. I said I did not know much about it. He asked me if Booth had spoken to me about it, and I said yes, but I did not understand much about it and hadn't given it much attention. I think it was characterized something about a Lincoln well or something like that—a Lincoln oil well or property or something of that kind. I don't know; my impression is that I said that I did not even care to take that up, because I was not familiar with it, and in some way or other he said he could be of a great deal of assistance when he came back. He said he was a Senator, and I understood that he meant a State senator from some local State which he came from, and he said he was United States Senator, and then I said I did not think I wanted to go into the matter at all. I was rather decided about the matter, but he asked me to see Booth again and said any arrangement Booth would make with me or had made with me would have his sanction or approval, and to see Mr. Booth again.

Q. Now, were you acquainted with Mr. Booth at that time? I take it you were, from your testimony.—A. Yes; I had met Mr. Booth, I think, in August, 1922.

Q. State whether or not Mr. Booth ever discussed with you the affairs of Gordon Campbell or the Campbell oil companies or syndicates, whatever you call them.

Senator WALSH. We object to that as immaterial.

Mr. SLATTERY. We have established the agency, your honor.

The COURT. Overruled. He may answer the question.

The WITNESS. Yes; I had.

By Mr. SLATTERY:

Q. And do you recall when, Mr. Hayes?—A. It must have been in the early part of March, 1923.

Q. What conversations did you have with Mr. Booth respecting these matters of Campbell's before the department?—A. Why, I met Mr. Booth one day there in the department. I think I met him on the street in the early part of March; and he asked me to come over and see him that afternoon, and I went over to his office in the office of the attorney for the Department of the Interior—quite a large room—and I remember he had a large desk.

Senator WALSH. Well, one moment; I object to this. It appears it was prior to the time he had a conversation with Senator WHEELER.

Mr. SLATTERY. Well, if your honor pleases, as I understand, you have already overruled his objection on that ground; the agency has been established already.

Senator WALSH. This is something that transpired before the alleged agency was established.

Mr. SLATTERY. He said whatever arrangements he has made with him or will make with him.

The COURT. I understood the testimony was to refer to something that was to follow.

Mr. SLATTERY. He said whateyer arrangements he has with you or will make with you.

Senator WALSH. I object to that.

The COURT. Objection is sustained.

Mr. SLATTERY. Well, do I understand that the court rules out all antecedent arrangements made by Mr. Booth?

The COURT. Unless you bring it home to the defendant, unless you connect the defendant up with it.

Mr. SLATTERY. Well, in this respect, if the court please, the testimony is, he said any arrangements that he has made with you or will make with you has my sanction.

The COURT. Yes; but Mr. District Attorney, suppose Booth had arranged with this gentleman to commit burglary.

Mr. SLATTERY. Well, of course, if your honor please, that would be unreasonable. This is with respect to these matters with which they were discussing the Campbell matters. That was the object of the discussion in the Waldorf Hotel there.

The COURT. Objection sustained.

By Mr. SLATTERY:

Q. What arrangement, if any, was made with you by Mr. Booth respecting a division of fees?

Senator WALSH. We object to that as immaterial and irrelevant.

The COURT. Sustained.

By Mr. SLATTERY:

Q. Did you see Mr. Booth after that, Mr. Hayes, after your talk with Senator WHEELER?—A. Yes; I saw Mr. Booth off and on until he left the Department of the Interior. I think he went from there to the Department of Justice; I don't think I ever saw him in the Department of Justice.

Q. What conversations, if any, did you have with him respecting these matters of Campbell's before the department?—A. I did not hear the question. Repeat the question.

The REPORTER. What conversations, if any, did you have with him respecting these matters of Campbell's before the department?

A. I do not understand your question.

By Mr. SLATTERY:

Q. After you had talked with Senator WHEELER, just before he was leaving for Europe, I understand that you testified that you did have further conversations with the solicitor, Mr. Booth?—A. Quite frequently, up until the time he left the Department of the Interior.

Q. Now, what conversations did you have with him respecting any arrangements which were referred to in this conversation that you had with Senator WHEELER?—A. Well, Mr. Booth practically reiterated two or three occasions——

Senator WALSH. One moment, I object to what he particularly reiterated. You were asked to give the conversation.

By Mr. SLATTERY:

Q. Just tell also what he said about the agreement?—A. I told him the result of my conversation with Senator WHEELER, and he urged upon me to go on with the matter; said I was very foolish; that there was very little work to do and there was very substantial compensation for the work to be done. I do not remember what compensation he said Senator WHEELER was to get.

Q. What is your best recollection?—A. That I was to get half of it.

Q. You were to get half of it?—A. Half of what Senator WHEELER was to get.

Q. Was there any estimate made by Mr. Booth of the amount of it?

Senator WALSH. We object to that also, if the court please, upon the ground that it is irrelevant and immaterial.

The COURT. Sustained.

By Mr. SLATTERY:

Q. Was there any statement of the amount made? This, of course, was after the conversation with Senator WHEELER.

Senator WALSH. The witness has already answered; he said he did not know what compensation Senator WHEELER was to get.

The COURT. Sustained.

By Mr. SLATTERY:

Q. Well, what, if anything else, was said as to anything that Mr. Booth was to do?

Senator WALSH. We object to that as immaterial and irrelevant.

Mr. SLATTERY. It is a part of the arrangement.

The COURT. The objection is sustained.

By Mr. SLATTERY:

Q. Was there anything else in that conversation that you have been relating to us, Mr. Hayes?—A. Why, he showed me——

Senator WALSH. Excuse me, what conversation do you refer to?

Mr. SLATTERY. The one he has been testifying about.

Senator WALSH. He has been testifying about several.

The WITNESS. The conversation, as I understand, is the one after I talked with Senator WHEELER; is that the one?

Mr. SLATTERY. Yes.

The WITNESS. He showed me a physical map of this section of the country. He had two, as I recall it, and they were marked with little pins or something of varied colors, which indicated something to him, I suppose. I think he told me that certain colored pins, geologists—the Government geologists—had recommended as good oil lands, and others where oil had been found and others that were not good, and that he also had another, showing the claims which he said were the Gordon Campbell claims.

By Mr. SLATTERY:

Q. Was this map in the office of the commissioner of the Department of the Interior?—A. Yes, sir.

Q. What, if anything, did he say with regard to that map?—A. With respect to what?

Q. With respect to the presence of oil?—A. Well, he said that——

Senator WALSH. Just one moment; that is entirely immaterial, if your honor please.

Mr. SLATTERY. There is an arrangement here, if your honor please.

The COURT. I hardly see how it would be any part of the arrangement.

Mr. SLATTERY. Well, it is in connection with this, by way of inducement. He had stated that he knew nothing concerning these matters, and he was being advised about them by the witness Booth, who was delegated, as I understood, to make the arrangement with him.

The COURT. Well, assuming that to be true, I think the testimony would have to be very carefully limited as to an arrangement, not what representations were made as to the character of the land, assuming that part. The objection is sustained.

Q. Was anything said by Mr. Booth to you as to what you were to do for this 50 per cent of the fee what you were to get?—A. Well, I have to be more or less of a figurehead. The lands he showed me, which he said would——

Senator WALSH. I move to strike out the statement of the witness that he was to be more or less of a figurehead. He was asked to state what Mr. Booth said to him with respect to what he was to do.

The COURT. The motion is denied.

Senator WALSH. Please note an exception.

The WITNESS: Mr. Booth said I would have very little to do; that he would keep me advised of the practice and of the decisions and of the statutes, and I would merely represent Senator WHEELER on these different hearings.

By Mr. SLATTERY:

Q. Before what?—A. Before the Department of the Interior.

Q. With respect to what?—A. With respect to these Gordon Campbell claims and some claim that I did not know anything about, called the Lincoln claim, I think.

Q. The Lincoln claim?—A. It was close at hand; that was, I think to come up during the absence of the Senator; that is the way I understood it.

Mr. SLATTERY. You may cross-examine.

Cross-examination by Senator WALSH:

Q. You say your home is in New York, Mr. Hayes?—A. Yes, sir.

Q. When did you come to Great Falls?—A. I arrived here this morning at 7.30.

Q. In obedience to a subpœna?—A. In obedience to a promise I made to the department of the 16th of last March. They said they would subpœna me, and I said it was not necessary; that as long as they were going to bring me here, I would come without a subpœna.

Q. With whom did you have this arrangement?—A. With Mr. Donovan, the Assistant to the Attorney General; Mr. Slattery; and Mr. Stewart, I think.

Q. Where was this arrangement made?—A. In the office of the Attorney General at Washington.

Q. How did you happen to be there?—A. They sent for me. I was in Habana, Cuba, and they sent for me.

Q. When did you first learn about this indictment against Senator WHEELER?—A. Why, I do not know that I can answer that. I don't know that I ever knew of the indictment against him. They sent for me to Habana, Cuba, where I have been for seven months prior to the 16th of March. They sent for me on several occasions. I was busy and could not get off. I came up; I arrived in Washington.

Q. I simply asked you when you learned first about this indictment.—A. I think that was the first time I learned that there was an actual indictment. I saw the articles in the papers from time to time, but I did not know much about what was going on; I was in Cuba last August.

Q. The question is, Mr. Hayes, when did you first learn about this indictment against Mr. WHEELER?—A. I say on the 16th of March, last.

Q. That is a year ago?—A. That is this year; last month.

Q. Last month? Yes. Did you say that you had or that you had not read anything about it in the papers prior to that time?—A. Well, I read a great deal in the paper about the oil leases and so on, but I did not pay very much attention to it; I was not very much interested in the matter.

Q. I know; but the question I have addressed to you, Mr. Hayes, is whether you read in the papers anything about Senator WHEELER having been indicted.—A. I answered that by saying no.

Q. Where were you in the month of April, last year?—A. That is, 1924?

Q. 1924?—A. I was between New York and Washington, I guess.

Q. Between New York and Washington?—A. Yes.

Q. Reading the daily papers?—A. I suppose so; yes.

Q. You never read anything about Senator WHEELER having been indicted?—A. If I did, it escaped my mind; I did not know anything about it.

Q. Of course, it might have. What have you to say now, then, as to whether you have learned about the indictment of Senator WHEELER prior to March last?—A. No, sir; except what I just told you.

Q. That is, if you did learn of it prior to that time, it had passed out of your mind?—A. Exactly.

Q. And when did you first talk with anybody about this conversation that you have spoken of with Senator WHEELER in the Waldorf-Astoria Hotel?—A. March 6—March 16 last. I have spoken of it in my office.

Q. In your office?—A. Oh, I have spoken of it in my office; certainly.

Q. To whom?—A. To my associates.

Q. When?—A. About the time it happened, the same day or the day after; probably the day after. I did not return to my office until that night.

Q. Well, you did not associate yourself with the business at all?—A. In this business?

Q. Yes; in the Gordon Campbell business?—A. No, sir.

Q. You spoke to your associates at the time you had this talk with Senator WHEELER?—A. Yes.

Q. Who are these associates of yours?—A. Charles E. MacMahon.

Q. What is your firm?—A. George B. Hayes.

Q. Mr. MacMahon is in your office?—A. He and six others; yes.

Q. Now, you had had some conversation, as I understand you, with Mr. Booth prior to the time that you met Senator WHEELER?—A. I had; yes, sir.

Q. Was that the first time you had ever met Senator WHEELER?—A. Yes, sir.

Q. And when did you next thereafter meet him?—A. At the Brookhart committee hearings.

Q. That is, the committee investigating the Department of Justice?—A. Yes, sir.

Q. Of which Senator WHEELER was a member?—A. He was a member of that committee.

Q. Yes; and spoken of generally as the prosecutor for the committee?

Mr. SLATTERY. I object to that as immaterial, what he is spoken of.

The COURT. Sustained.

By Senator WALSH:

Q. Well, were you a witness before that committee?—A. Yes, sir.

Q. Testifying about what matter?—A. About why I did not put a defense in an action that I brought in New York in the Federal courts.

Q. What was that action?

Mr. STEWART. That is objected to as improper cross-examination.

The COURT. Overruled.

The WITNESS. An action brought by the United States against Hart, who was prohibition director, and, I think, 16 or 17 others, for violation of the prohibition act.

Q. Did Senator WHEELER interrogate you on that occasion?—A. He did; yes, sir.

Q. Now, how long prior to the time that you had this conversation with Senator WHEELER in the Waldorf-Astoria Hotel was it that you met Mr. Booth in Washington?—A. Within a week; that is the best answer I could give you. I was there every week in Washington.

Q. About what time was this you were in Washington?—A. I was there every week; I could fix the date.

Q. Yes; but I mean about when was it? What month was it?—A. The month of March.

Q. The month of March, 1923?—A. No—yes; March, 1923, is right.

Q. What time in the month?—A. The week beginning the 19th, I suppose.

Q. The 19th of March; it was that week. And it was about within a week after that time that you met Senator WHEELER in New York at the Waldorf-Astoria?—A. No; I met WHEELER before that time. My recollection is I met him on the 16th of March; the week beginning the 19th of March I was in Washington; I do not remember the date.

Q. Mr. Hayes, I was directing your attention to your presence in Washington on the occasion when you met Mr. Booth prior to the time that you——A. Oh, I met Mr. Booth prior to that; well, almost, well, three or four days in the preceding week, because this was the subject of the conversation on three or four occasions in the preceding week, and prior to that I met him off and on between the middle of August, 1922, and that time.

Q. Well, you met Mr. Booth then in Washington sometime during the week prior?—A. The preceding week.

Q. During the week prior to March 16, 1923?—A. The week that was prior in which March 16 appeared.

Q. Yes. So that it was 10 days then, say?—A. Yes, sir.

Q. To the 16th?—A. Yes.

Q. Where do you stop in Washington?—A. At the Shoreham, or sometimes I had an apartment.

Q. Where was your apartment?—A. In the Albee Building.

Q. In the Albee Building?—A. Yes.

Q. A living apartment?—A. Yes, sir.

Q. How long had you occupied that apartment?—A. Oh, a year.

Q. Had you been practicing before the Department of the Interior?—A. I had one matter pending there; yes.

Q. What was the nature of that?—A. Why, that was under the war mineral relief act, before a committee of the whole or a board of the whole.

Q. How do you fix this date that you met Senator WHEELER as being March 16?—A. From a telegram I received from Mr. Booth.

Q. Have you got that telegram?—A. I think I have that telegram, or it is there [indicating] I think.

Q. How long did this conversation you had with Senator WHEELER at the Waldorf-Astoria last?—A. Well, I should say about half an hour, to the best recollection I have.

Q. Where did it take place?—A. In the hotel lobby there.

Q. That is rather a crowded place, isn't it, usually?—A. Why, you are familiar with it, I assume. Peacock Alley is not private, but the other end, in front of where the café used to be, is quite private; yes.

Q. And this was sometime between the hours of 4 and 7?—A. Some time between the hours of 4 and 7.

Q. In the evening?—A. In the afternoon; yes.

Q. That is a particularly busy time of day there, isn't it?—A. It used to be when the café was there, but not any longer.

Q. They congregate there for tea about that time?—A. At the end of the café, at the Peacock Alley end.

Q. To what place did you retire to have this conversation?—A. In the rear, toward the Sixth Avenue end of the hotel.

Q. In the corridor?—A. In the corridor, the Thirty-first Street side, the Sixth Avenue end.

Q. Are there any couches or lounges there?—A. A continuous line of them.

Q. Well, the Peacock Alley is to the south, isn't it?—A. No; Peacock Alley is to the east of the southeast corner.

Q. And you went to the west end?—A. To the west end.

Q. From the office?—A. From the office.

Q. Did you sit down?—A. Yes, sir.

Q. Now, you had never met Senator WHEELER before that time, as I understand you?—A. Never; I did not know he was United States Senator until that conversation.

Q. Did you talk about anything else except this matter of which you have told the jury?—A. Oh, he said he was going to Europe the following day; I think he said he was going to Russia, as I remember. And finally he said there was somebody waiting for him—I don't know whether it was his wife, a friend, or who it was——

Q. Did you see his friend there?—A. I saw no one.

Q. Was there anyone else with you?—A. With me?

Q. Yes.—A. No; no one. Wait a minute, I think—yes; I think Judge Corbett came up, but I know he did not meet Senator WHEELER; he waited for me.

Q. Who is Judge Corbett?—A. He is an associate of mine in the office; he used to be in Montana here—Hal S. Corbett.

Q. Did Mr. Corbett overhear this conversation you had?—A. He was not present; no. He merely accompanied me to the hotel and then went uptown with me afterwards.

Q. What official position does he sustain to you in your office?—A. He is engaged by me.

Q. An employee?—A. Yes.

Q. Or has he an interest in the business?—A. He has none; no one has any interest in my business except myself. Everyone there is engaged by me.

Q. Employed by you?—A. Employed by me; yes.

Q. Mr. Corbett was out here practicing law in the State of Montana for a number of years?—A. I understand he was; I did not know him at that time.

Q. It is reasonable to suppose that he knew something about the disposition of public lands?

Mr. SLATTERY. Just a moment; we object to that as argumentative.

The COURT. Sustained.

By Senator WALSH:

Q. Well, you did not call Mr. Corbett into this conversation you had with Senator Wheeler?

Mr. SLATTERY. That is objected to as repetition; he said he did not; he said he did not hear it at all.

The COURT. Sustained.

By Senator WALSH:

Q. Now, we have the time of the meeting up in New York fixed by these telegrams; how do you fix the time that you saw Mr. Booth in Washington prior to that occasion?—A. It was just prior to the receipt of these telegrams; the conversation had with Mr. Booth prior to that time was about the Senator WHEELER matter. That is, during the preceding week; two or three or four conversations about the Gordon Campbell claims.

Q. But you knew more or less about it, as I understand you, now, before you met Senator WHEELER?—A. That is what I have already repeated; yes, sir.

Q. Can you fix any more definitely the time that you were in Washington when you talked with Mr. Booth than during the week preceding?—A. No; I could not.

Q. Do you recall what day of the week was the 16th?—A. I looked it up.

Q. When did you look it up?—A. I think I looked it up right after I conferred with Mr. Donovan and Mr. Slattery and Mr. Stewart in Washington.

Q. And what day did you find it to be?—A. I found it to be Friday.

Q. Now, did Senator WHEELER give you any reason why he sought to get your services in this matter, you knowing nothing at all about this branch of the law?—A. Except that he said Mr. Booth had taken the matter up with me and he wanted me, if I would go, because of what Mr. Booth had said; said he was going to Europe, and said that he was United States Senator and should not practice before the department.

Q. Had you prior to that time had anything whatever to do with the oil leasing law?—A. Never.

Q. Had you prior to that time anything to do with any part of the disposition of public lands?—A. Never.

Q. Do you know any reason why Mr. Booth took this matter up with you, seeing that you did not know anything at all about the practice?—A. Mr. Booth could answer that better than I.

Q. You don't know, yourself, any reason?—A. No, sir.

Q. You never advertised yourself as a public-land lawyer?—A. I never advertised, Senator.

Mr. STEWART. That is objected to as improper cross-examination.

The COURT. Overruled. He has answered the question.

By Senator WALSH:

Q. And can you now conceive of any reason why you, a lawyer entirely unfamiliar with the public land laws and the practice before the department, should have been sought out for this work?—A. I think he said at one time that they wanted a lawyer from the East if they could get one.

Q. You spoke about "they"; to whom do you refer?—A. I meant to say he. I meant to say Mr. Booth.

Q. You meant to say Mr. Booth?—A. Yes.

Q. Senator WHEELER did not say anything to that effect?—A. No. The talk with Senator Wheeler was very quick. I mean he had an engagement, and I think I had an engagement, and he wanted me to go along in the matter if the arrangements with Booth were satisfactory, which he said he would confirm.

Q. As I understand you, Mr. Booth did not propose anything in the way of compensation to you?—A. Well, we both talked upon the assumption that we——

Q. Never mind the assumption. Read the question to the witness, Mr. Reporter.—A. I will answer your question. He said Mr. Booth may suggest a 50-50 basis on my fee. I said, "Yes." He said, "Is that satisfactory?" I said it would be if I went into the matter.

Q. But he did not tell you what his fee was?—A. He did not.

Q. No?—A. Well, I think he did, but I have no independent recollection of that now.

Q. And the proposition Senator WHEELER put up to you was, as I understand you, to go 50-50 upon his fee, without even stating what the fee was?—A. I say I think he stated the fee, but I have no independent recollection of what it was now. He did say it would run into very substantial figures. I think he mentioned millions, the same that Mr. Booth had mentioned.

Redirect examination by Mr. SLATTERY:

Q. You said that you received some telegrams, you had some telegraphic correspondence with Mr. Booth. Mr. Hayes, I show you a telegram marked "Plaintiff's Exhibit 40," and I will ask you to state if you recall sending that telegram.—A. Yes, sir.

Mr. SLATTERY. We offer in evidence plaintiff's Exhibit No. 40. I understand there is no objection.

It is on the form used by the Postal Telegraph Co. "Post office, New York, March 16, 1923. Edwin S. Booth, Solicitor, Department of the Interior, Washington, D. C.: Will be in Washington Friday morning. George B. Hayes."

I also offer in evidence Exhibit 41, which has been shown counsel:

"Post office, New York, March 16, 1923. Hon. Edwin E. S. Booth, Solicitor, Department of the Interior, Washington, D. C.: Court engagement prevents my arrival in Washington until to-morrow morning. George B. Hayes."

Q. I show you a paper marked "Plaintiff's Exhibit No. 42," Mr. Hayes, and I will ask you to state if you have any independent recollection of receiving the original, of which that purports to be a copy.—A. I do not believe I do.

Mr. SLATTERY. We offer in evidence plaintiff's Exhibit No. 42, copy of a telegram on the Western Union Telegraph blank:

WASHINGTON, D. C., *March 13, 1923.*

GEORGE B. HAYES,
48 Broadway, New York City:

Anxious to get in touch with you. Advise me when will be here.

EDWIN S. BOOTH.

Q. Do you recall whether you were in Washington between the 13th of March and the 16th of March, when you saw Senator WHEELER?—A. My recollection is that I was in the trial of a case during that week.

Q. In New York City?—A. Yes, sir.

Mr. SLATTERY. That is all, Mr. Hayes.

Recross-examination by Senator WALSH:

Q. What case was that, Mr. Hayes, you were trying?—A. I could not say; I could not tell you at this time, Senator. I try a good many during the session, during the winter.

Q. Yes, I suppose; but you stated that your recollection was that you were trying a case.—A. Well, my recollection is rather refreshed by the telegram there stating that owing to the court engagement I could not be there. That is what makes me state that.

Q. That is what refreshes your recollection?—A. That is what refreshes my recollection.

Q. Yes; you did not answer the question directly addressed to you by the district attorney as to whether you were in Washington between the 13th and the 16th?—A. I think I said my best recollection is that I was not.

Q. If the 16th was Friday, and I assume it was, the 13th would be——A. Tuesday.

Q. Tuesday. So you are not quite sure that it was prior to the preceding Sunday when you had first talked with Mr. Booth about the Campbell matters?—A. Yes; I am—the first talks, I am absolutely certain.

Q. You said "my recollection is during the preceding week."—A. That is the week preceding the week in which the 16th occurred.

Q. Exactly. That is, preceding the Sunday.—A. Exactly.

Q. Before the 16th?—A. Exactly.

Q. You can not fix it any more definitely than that, Mr. Hayes?—A. My recollection is that I saw him two or three or four times that week. I saw him frequently that week.

Q. Are we to understand that you talked with him two or three or four times about this matter?—A. Yes, sir; that was the only matter that I talked to Mr. Booth about on business. I had no other talks with him.

Q. And where did those talks take place——A. Mr. Booth's office.

Senator WALSH. That is all.

Mr. SLATTERY. That is all, Mr. Hayes.

EXTRACT FROM OPENING STATEMENT OF UNITED STATES DISTRICT ATTORNEY

Now, the evidence will also show you, gentlemen, that before Senator WHEELER went to Europe he arranged—he had a meeting with another witness by arrangement through Mr. Booth, and that at this meeting Senator WHEELER told the witness, who was a lawyer, that he would like him to appear in the place instead of Senator WHEELER before the Department of the Interior and the General Land Office regarding Campbell's land difficulties there pending, and told him that there were several matters, several pressing matters, before the Department of the Interior with respect to Campbell's acreage, or words to that effect, which needed prompt attention, and he also told this witness that any arrangement which he—which Solicitor Booth, Edwin S. Booth, might make with the witness was satisfactory to him, Senator WHEELER.

Now, the testimony will show you, further, gentlemen of the jury, that the arrangement which Mr. Booth attempted to make with this witness, sought to make with him, was this, that this witness was to appear before the Department of the Interior with respect to rendering services in regard to these permits mentioned in the indictment and before the department in the place and instead of Senator WHEELER, who did not want to appear because he was United States Senator, and that if he would appear in his place and stead, he, the witness, would receive 50 per cent of the share which Senator WHEELER was to receive of the proceeds of the lands saved for Campbell or procured for him, and it was represented to the witness by Mr. Booth that his share—that the share of the witness for thus appearing—would run into the millions of dollars, and there will be other evidence substantiating that feature of the case.

Mr. WALSH. Mr. President, a few weeks ago the venerable chairman of the Committee on Appropriations had inserted in the RECORD a compilation showing the considerable cost of investigations conducted by the Senate. Though actuated only by a commendable desire to promote the economical use of the contingent funds of the Senate—a perfectly laudable admonition—his table has been seized upon as a text offering a base from which to launch diatribes against the investigations carried on within the last three years, the purpose being, as the facts developed became more or less obscure from the lapse of time and failing memories, to develop an atmosphere in which those whose misdeeds were exposed may go unwhipped of justice. To the same end a late issue of the New York Commercial, in an editorial entitled "Gone up in smoke," gloating over the defeat by the narrow margin of 3 votes of the report of the Judiciary Committee on the manner in which the Department of Justice prosecuted the inquiry into the alleged contempt of the

Aluminum Co. of America, after paying its respects to me in connection with the oil leases scandal, tells a listening world that—

It is now common knowledge that there was no "scandal"; that the leases and contracts were to carry out in part a carefully conceived plan of preparedness unanimously approved by the Naval War Board; that there was a grave situation at that time, and that it was because of this the contracts were hastened. What was called "secrecy" in the letting of the same was in keeping with public good. It is further now common knowledge that the Pacific Fleet, even with the grave situation past, is without the necessary fuel storage tanks at strategic points because of the action taken by the Senate in forcing the President to bring suits.

The public had been on a previous occasion advised as to how expensive was the investigation into the leasing of the naval oil reserves and that instituted pursuant to the resolution of Senator WHEELER as a result of which Harry M. Daugherty was relegated to private life. It is not less important that information should be at hand as to how much the retaliatory measures taken against the Senator cost the people of the United States, which I shall attempt to elicit by an appropriate resolution. That, however, is of no great consequence, but it is of transcendent importance that the attempt through perjured testimony to silence a Member of this body and overwhelm him in ignominy should not pass unnoticed. I accordingly submit for the consideration of the Senate the resolution which I send to the desk and ask to have read.

The VICE PRESIDENT. The clerk will read as requested.

The legislative clerk read the resolution (S. Res. 171), as follows:

Resolved, That the Attorney General be, and he hereby is, directed to transmit to the Senate an itemized statement of all expenditures made or obligations incurred in connection with investigations conducted by or under the authority of the Department of Justice touching alleged or supposed offenses by Senator BURTON K. WHEELER, or with the finding or disposition of indictments against him; and be it further

Resolved, That the Attorney General be, and he hereby is, directed to advise the Senate whether it is the purpose of the Department of Justice to present to a grand jury the testimony of George B. Hayes given in the trial of the case of the United States against BURTON K. WHEELER in the District Court of the United States for the District of Montana, with the facts and circumstances attending the same, with a view to an indictment for perjury in the giving of such testimony.

Mr. WALSH. I ask unanimous consent for the present consideration of the resolution.

Mr. CUMMINS. I ask that the resolution may go over under the rule.

The VICE PRESIDENT. The resolution will go over under the rule.

Mr. BRUCE. Mr. President, I do not see how any two minds could differ in regard to the propriety of adopting the resolution just submitted by the Senator from Montana [Mr. WALSH]. I quite agree with him in thinking that the prosecution of Senator WHEELER is one of the most extraordinary episodes in the history of tyrannical criminal procedure. To find a parallel to it we must go back to the Titus Oates conspiracy in English history. I am glad to say that from the very beginning I have always believed Senator WHEELER to be absolutely innocent of the charges that were made against him. He did me the honor, before he was ever tried and acquitted, in a conversation with me to assure me that he was an absolutely guiltless man. I expect to vote for the resolution.

Now I understand why it was that the senior Senator from Montana [Mr. WALSH] should have asked me on Saturday to be one of his auditors. I had supposed he intended to honor me. It seems that his purpose was something different. It seems to me that the unanswerable case which he has made out, the admirable vindication that he has offered, would have been even stronger if he had not made the narrow-minded, acrid reference that he did to the aluminum matter. The Judiciary Committee by a majority vote recommended an investigation of that matter. Why was that recommendation not followed up? That is the question that I ask him and that I ask everybody connected with it. If it was suggested in good faith, if it was proposed in absolute sincerity, why did the Senator not go on with it? He came here and asked that the recommendation be eliminated, and it was eliminated. Then what was left? Nothing but an attack on the Attorney General of the United States because, forsooth, there was delay to the extent of some three months in the prosecution and investigation of a matter that it was desired that he should prosecute, and because, forsooth, he was not quite as familiar as he might have been with the details of one of the thousands or tens of thousands of cases pending in his department.

In that state of things I did what I shall always do so long as I am a Member of this body. I relied upon my conscience. I relied upon my own intellect, such as it is, and I exercised my individual judgment as best I could. I voted against the censure suggested by the Senator from Montana, and I am grateful to the Senator from South Carolina [Mr. BLEASE] for voting with me, because whatever else may be said of the Senator from South Carolina no one denies that he is endowed with unshaken courage. I happen to know that there were a good many others who desired to vote with me, more than one, who did not vote with me because there are times when the fetish of machine fidelity, of party subserviency, seems to take hold of the human mind with an irresistible and to me almost inexplicable force. Though after hearing expressed not a little sentiment unfavorable in the highest degree to the justice and policy of censure under the circumstances, I found myself on this side of the Chamber alone, and all by reason of the fact that I would not declare by my vote that the Attorney General of the United States, a Cabinet officer, because he is supposed to have procrastinated somewhat in the prosecution of the aluminum inquiry, because he is deemed to have been somewhat dilatory in putting the machinery of his office into action, was deserving of condemnation. I have practiced law too long and have seen it practiced by others too long not to take a charitable view of such a measure of dilatoriness or procrastination on the part of a fellow member of my profession.

And say to me that the Attorney General is not familiar with all the details of a matter pending in his office? For some years I was honored with the position of head of the law department of the city of Baltimore. Of course compared with the number of cases pending in the Department of Justice at Washington the number of cases that I had to handle, large as they were, was but as the grains of sand in an hourglass compared with the grains of sand along the illimitable strand of the sea. Speaking from my own experience, I would say that I was utterly unfit to discharge the duties of the office to which I allude if I had been familiar with all the details of all the cases pending in it.

The duties of the Attorney General of the United States have become mere administrative duties. It is not his business to try cases in court; it is not his business to follow closely upon the heels of every case in his department; it is not his business to familiarize himself with the details of every such case. If he did so, I say without hesitation that there would then be real reason for asserting that he was unequal to the high requirements and responsibilities of his office.

Now, I care not what may be the feelings of any other Senator in this body, but in my eyes human character is too precious a jewel, whether it be the character of the Attorney General of the United States or the character of any Member of this body, including my own, to be lightly stained or besmirched.

I say without a moment's hesitation that the mistake of my confreres upon this side of the Chamber has not been in instituting investigations. That is almost the highest function of a legislative body. I personally voted for every investigation that was suggested in the Senate during the last Congress. The mistake, however, that they have made, and the mistake that the majority of my friends on the other side of the Chamber would have made under the same circumstances, has been in not prosecuting those investigations in the fair, impartial, and dispassionate spirit that the American people demand. The Daugherty inquiry would have been followed by a different result, in my opinion, if it had been prosecuted in a different spirit, and the suspicious, if not damning circumstances, developed by the Teapot Dome investigation would have had a different effect upon the American people if that investigation also had been prosecuted in a different spirit, though, owing to the trained professional experience of the Senator from Montana, it was prosecuted in substantially a different spirit and in accordance with different methods from the Daugherty investigation.

I say I resent—I will not say with scorn, but with indignation——

Mr. WALSH. Mr. President, will the Senator from Maryland suffer an interruption?

Mr. BRUCE. Yes; I yield.

Mr. WALSH. Mr. President, I can not find words to express the sorrow I feel that the Senator from Maryland should have thought or felt that there was anything whatever in aught I said that could be deemed offensive to him. I beg to assure the Senator that I asked him yesterday if he could not be present to-day, with the most kindly feeling and without a breath of suspicion that there was anything that I was going to say that would be in the slightest degree offensive to

him. There is absolutely nothing in what I said that could be tortured into such construction.

Mr. BRUCE. Does not the Senator see that his sneering reference to the Commercial Advertiser and what it had to say about my vote with regard to the aluminum inquiry was calculated to wound my susceptibilities as a Senator and a gentleman?

Mr. WALSH. I made no sneering reference to it at all. The only reference I made to the Attorney General was that he had testified, as it will be recalled, that seven months after he had been in office he had never heard of the aluminum inquiry.

Mr. BRUCE. I am not going to be interrupted if the Senator is going into facts connected with the inquiry. That is over.

Mr. WALSH. Very well; but, at the same time, I merely desire to say that in my judgment there is nothing in what I said that gave occasion for these remarks of the Senator from Maryland.

Mr. BRUCE. I am very glad to receive that assurance. Certainly that was not the impression left upon my mind. I do not know what was the impression left upon the mind of my fellow Senators; but I am, indeed, glad to receive that assurance. The Senator from Montana knows that I have always entertained a high respect for his abilities and for his public character. At the same time there has been a disposition to hold me to a certain degree of responsibility for the utterances on this floor which I have made in the discharge of what I conceive to be my duty. If I have misconceived the intentions of the Senator from Montana, if I have misinterpreted his words, I am sincereful regretful. But for the impression that I did not misconceive his intention and did not misinterpret his words I should certainly not have said what I did and jeoparded the pleasant and agreeable relations that have always existed between him and me. He himself knows—nobody knows better—that when the Teapot Dome investigation had been concluded I certified before the Senate in the strongest terms that words could employ to the ability and the truly professional skill with which he had prosecuted that investigation.

So far as the Senator is concerned, I am sorry, I repeat, that I have misunderstood him; but I am not sorry, aside from that fact, that I have had this opportunity to explain the motives by which I was actuated in casting a vote in relation to which in some quarters there has been a strong disposition, apparently, to impute to me considerations by which I was never influenced in point of fact.

Mr. WILLIS. Mr. President, I call for the regular order.

The VICE PRESIDENT. The regular order is called for. The calendar under Rule VIII is in order.

Mr. BORAH. Mr. President——

Mr. FESS. Mr. President, does the Senator from Idaho desire the floor.

Mr. BORAH. Only for a moment.

Mr. WILLIS. Mr. President, I withdraw my request.

The VICE PRESIDENT. The Senator from Idaho is recognized.

Mr. BORAH. Mr. President, I was chairman of the committee which had the task of investigating the facts concerning the charge against Senator WHEELER. I quite agree with the Senator from Montana [Mr. WALSH] that the story of the prosecution of Senator WHEELER thereafter is a sad and sorry story, and I assume that the Department of Justice will go so far as it can in remedying the wrongs of that prosecution. I assume when these matters as they have been presented this morning by the Senator from Montana come to the notice of the Attorney General and of the President of the United States that the department will undertake to purge that record of perjury if it is possible to do so by prosecuting those who were, in my opinion, guilty of perjury.

After the facts were submitted to the committee of which I had the honor to be chairman it was difficult for me to see why the Government desired to continue a criminal prosecution. The committee called before it all who had knowledge of the making of this contract, and all who were familiar in any way with the original transaction which was supposed to be the initiation of a conspiracy. All the witnesses who were familiar with the contract and who knew of the inception of it, were clear in their statements, and thoroughly, as it seemed to us, exonerated Senator WHEELER. The prosecution always appeared to me thereafter to be actuated by some other desire than that of securing justice. I do not attribute that, Mr. President, to the present administration—that is to say, to the present Attorney General and his administration; it was an inheritance which came to him. I do not intimate that the present Attorney General was actuated through wrong motives.

However, what I rise to discuss only for a moment is this: There has grown out of this prosecution, Mr. President, a general principle which is of very great importance, it seems to me, and ought to have our consideration. If it becomes a practice for the Government to bring men two or three thousand miles away from their homes for the purpose of putting them on trial in the District of Columbia because some incident occurs here, because of the filing of a paper in one of the departments, or because of some unimportant act in connection with the departments, that raises one of the most important questions which we could have before us for consideration; and it is peculiarly accentuated by the WHEELER trial.

In that case practically all the important witnesses lived in Montana—that is, all the witnesses who knew of the original transaction; the property was in Montana; the conferences which gave rise to the conspiracy which was charged were held in Montana; the scene of the alleged offense was in Montana; and yet, notwithstanding these facts, by reason of some unimportant matters connected with the department here, Senator WHEELER was brought to the District of Columbia for trial.

As a practical proposition it was not so unfortunate for Senator WHEELER as it would be for an ordinary citizen. He was here and had a better opportunity to meet the situation. Mr. President, when I first came to the Senate 79 per cent of my State was under the control and dominance of the National Government; some 70 per cent is yet under the control of the National Government; and if every citizen of my State or of any of the other Western States who is brought in contact with the National Government through the administration of its land laws is to be brought to Washington for the purpose of trial, simply because there is a paper filed in a department here or because some incident of that kind has arisen, it presents a question which is most serious for our consideration. While it is true that the Supreme Court of the United States has said that technically that may be done, they did what the Supreme Court very rarely does, they went outside, if I may use that term, not in an offensive way, of the record to condemn the practice. The one proposition in this history now which concerns me most is to know whether it is to be used as a precedent for other prosecutions in the District of Columbia under the same circumstances and conditions which made up the history of this prosecution. That is of permanent general importance.

The other matter is of importance in this particular case and ought to be dealt with by the Department of Justice with efficiency and drastically, but this matter is one which is of concern to the whole country but of peculiar concern to the Western States. I want to enter my protest against the practice as unwise, unjust, oppressive, and against the whole theory of Anglo-Saxon jurisprudence.

CONSIDERATION OF THE CALENDAR

Mr. FESS. Mr. President, there are 30 minutes left of the morning hour which might be used in considering bills on the calendar. I therefore ask unanimous consent that the Senate proceed with the consideration of the measures on the calendar, beginning where we left off when the calendar was last under consideration.

The PRESIDING OFFICER (Mr. BINGHAM in the chair). Is there objection?

Mr. ROBINSON of Arkansas. Mr. President, may I inquire what is the number where it is proposed to begin the consideration of the calendar?

Mr. FESS. It is Order of Business No. 204.

Mr. MEANS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Colorado?

Mr. FESS. I yield.

Mr. MEANS. I desire in my own right to object unless the Senator will include the bill which was put over at the request of the junior Senator from Utah [Mr. KING], which has been reported out by the Committee on Claims and which I have purposely left upon the calendar after discussion for some length of time. I should like to have it disposed of this morning. It is the first bill on the calendar following the debt settlement bills. It has been put over three or four times at the request of the Senator from Utah.

If the Senator will allow that bill to come up at the present time, I have no objection; but that bill should be disposed of. This is the first calendar day we have had for some time; the bill has been discussed now each calendar day, and I should like to have it disposed of.

Mr. FESS. Then I will change the request and ask that we commence with the calendar at the beginning.

Mr. WILLIS. Mr. President, will not my colleague embody in his request also a further request that we continue until 3 o'clock, so as to give us some time to work on the calendar?

Mr. GOODING. I hope the Senator will do that. There are some very important bills on the calendar which should be disposed of.

Mr. FESS. Mr. President, in view of the suggestion of the Senator from Idaho, who has charge of the long-and-short-haul measure, which is the unfinished business, I incorporate in my request the suggestion as to continuing until 3 o'clock.

The PRESIDING OFFICER. Is there objection?

Mr. KING. Mr. President, let us proceed until 2 o'clock, and then the request may be renewed if desired.

The PRESIDING OFFICER. Does the Senator object?

Mr. KING. I object for the moment.

The PRESIDING OFFICER. Objection is made. The calendar under Rule VIII is in order.

The first business on the calendar was the bill (S. 1134) to authorize the settlement of the indebtedness of the Czechoslovak Republic to the United States of America.

Mr. WILLIS. Mr. President, I suggest that Orders of Business 3, 4, 5, 6, 7, and 8, being Senate bills 1134, 1135, 1136, 1137, 1138, and 1139, go over. I understand that it is not desired that they be taken up to-day.

The PRESIDING OFFICER. The bills will be passed over.

CLAIMS AGAINST THE UNITED STATES

The bill (S. 1912) to provide a method for the settlement of claims arising against the Government of the United States in sums not exceeding $5,000 in any one case was considered as in Committee of the Whole.

Mr. MEANS. I ask that the bill be read for action on the committee amendments, there being three very small ones.

The PRESIDING OFFICER. The amendments of the committee will be stated.

The amendments were, on page 2, line 1, after the words "April 6," to strike out "1917" and insert "1920"; in line 7, after the words "as a," to strike out "legal" and insert "just"; and on page 3, line 6, after the words "as a," to strike out "legal" and insert "just," so as to make the bill read:

Be it enacted, etc., That when used in this act the terms "department and establishment" and "department or establishment" mean any executive department or other independent establishment of the Government; the word "employee" shall include enlisted men in the Army, Navy, and Marine Corps.

SEC. 2. That authority is hereby conferred upon the head of each department and establishment acting on behalf of the Government of the United States to consider, ascertain, adjust, and determine any claim accruing after April 6, 1920, on account of damages to or loss of privately owned property where the amount of the claim does not exceed $5,000, caused by the negligence of any officer or employee of the Government acting within the scope of his employment. Such amount as may be found to be due to any claimant shall be certified to Congress as a just claim for payment out of appropriations that may be made by Congress therefor, together with a brief statement of the character of each claim, the amount claimed, and the amount allowed: *Provided*, That no claim shall be considered by a department or other independent establishment unless presented to it within one year from the date of the accrual of said claim, except that any such claim accrued after April 6, 1920, or prior to the passage of this act, may be presented within one year after the approval of this act.

SEC. 3. That authority is hereby conferred upon the United States Employees' Compensation Commission to consider, ascertain, adjust, and determine any claim accruing after April 6, 1920, on account of personal injury or death when caused by the negligence or wrongful act or omission of any officer or employee of the Government acting within the scope of his office or employment, or if attributable to any defect or insufficiency in any machinery, vehicle, appliance, or other materials, and such defect or insufficiency is due to the negligence or wrongful act or omission of an officer or employee of the Government, where the amount of such claim does not exceed $5,000. The amount thus ascertained to be just and equitable by the United States Employees' Compensation Commission shall be certified to the Congress as a just claim for payment out of appropriations that may be made by Congress therefor, together with a brief statement of the character of each claim, the amount claimed, and the amount allowed: *Provided*, That no claim shall be considered by the United States Employees' Compensation Commission unless presented to it within one year from the date of the injury or death complained of, except that any such claim accrued after April 6, 1920, or prior to the approval of this act, may be presented within one year after the approval of this act.

SEC. 4. That acceptance by any claimant of the amount determined under the provisions of this act shall be deemed to be in full settlement of such claim against the Government of the United States.

SEC. 5. That any and all acts in conflict with the provisions of this act are hereby repealed.

The amendments were agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

Mr. KING. I ask that the bill be read, Mr. President.

The PRESIDING OFFICER. The Secretary will read the bill as amended.

The legislative clerk read the bill as amended.

Mr. KING. Mr. President, will the Senator from Colorado advise us whether he has received a communication from the Attorney General in regard to this bill?

Mr. MEANS. Yes; I have had communications from all of the departments. I can not recall the one from the Attorney General; but there was no objection by anyone to the first portion of the bill. That is exactly the same verbiage as the present law, merely increasing the limit to $5,000 instead of $1,000, with the exception of the date which we have just amended.

As to the second provision, the only objection of any department is that some of the departments claim that they are better equipped to handle these matters, particularly the Post Office Department; that they themselves should pass on these tort claims, because they have the inspectors and could pass on them. They all say, however—even the letter of the Postmaster General, which I have included in the report, and which was the only one opposing it—that the measure is a good one and should pass; but the Postmaster General thinks his department ought to be able to handle it instead of the compensation commission. Even in that letter, however, he recommends the passage of the bill, although he objects to that one feature.

Mr. KING. Will the Senator explain the present functions of the United States Employees' Compensation Commission?

Mr. MEANS. The commission consists of three members, and their duty is to pass upon all claims arising by reason of injury—tort claims, as we call them—sustained by employees of the Government. They pass upon them in accordance with certain procedure and scales and rates laid down by the law. That agency has been selected because its members are familiar with the questions of contributory negligence, the question of the doctors, the extent of the injury, and so forth.

Some one must pass upon those questions. We can not do it in the Committee on Claims. We sit there and report out bills, and as it is impossible for us to determine the extent of the injury, we just have to guess at it. Sometimes we say: "What shall we allow this man? Well, we will allow him $3,000." The next time we pass upon a claim we say: "We will allow him $5,000," and sometimes more. There is no way of determining the extent of the injury.

This constituted body, which is accustomed to passing upon these things, can tell whether the injury is permanent or whether it is only temporary, whether the claimant should receive $1,000 or whether he is permanently injured and should be given a larger amount. We limit the award to $5,000, however, and then require the commission to make a full report to the Congress as to why they arrived at a certain amount.

Mr. KING. I understand that the Employees' Compensation Commission has authority now to grant compensation to employees of the Government.

Mr. MEANS. Yes.

Mr. KING. As I understand, the effect of this bill is to permit suit to be brought, or at least an examination to be made, by the Employees' Compensation Commission, and the Employees' Compensation Commission is permitted to render judgment.

Mr. MEANS. No.

Mr. KING. Well, that is the effect of it. It is permitted to certify to Congress the fact as to whether a claim is a just claim or not, and certify to Congress, up to $5,000, claims which may be submitted by persons who are not employees of the Government.

Mr. MEANS. That portion of the Senator's statement is correct; but it is not a judgment, any more than we now have presented to the Congress many, many claims of those who have been injured, either by defective machinery or because of carelessness of an agent of the Government in the performance of his duty. Instead of the Claims Committees of Congress passing upon the justness of claims, we have an agency that is duly equipped, that knows this kind of business, and that will pass upon the matter and then report back

to Congress. Congress has not lost its authority or control. It is not an opening of the door to permit suit to be brought or judgment to be entered. There will be no more claims in the future, I apprehend, than we have now, that Senators and Representatives present. Only recently we passed one, I notice, introduced by the Senator from Texas, where a boy was killed by an airplane. We had to guess at the amount that we should allow, and we allowed it, and it was a justifiable claim.

We had no evidence to show the extent of the pecuniary injury, and the sole purpose of this bill is to enlarge the scope of the small claims bill previously passed, which has been found to work admirably, and relieve the Claims Committee of that duty.

Mr. KING. Mr. President, I can appreciate the motives which prompted the Senator from Colorado and the other members of the Claims Committee to recommend this legislation. I confess, however, that it strikes me as being unwise and injudicious, if not unsafe, so far as the Government is concerned. I was very anxious that the joint committee, consisting of members from the Claims Committee and members from the Judiciary Committee—and the joint committee has been appointed, as I am advised—should meet for the purpose of considering the entire question as to whether the Government of the United States would put itself in the position of being sued for the torts of its agents and employees. I regret that this bill has come before us before the whole subject has been fully investigated by the joint committee. I confess that I look with a good deal of apprehension upon the precedent which we are establishing, in part following a bad precedent, in my judgment, which heretofore has been established, which, as the Senator from Colorado has said, gave jurisdiction to certain deparmental agencies to make findings up to $1,000 and to pay them also, as I recall.

I have grown up with the traditions of the common law. The Government may not be sued without its consent. Suit was not brought under the common law against a sovereign. Suit was not brought under the common law against the shires, the counties of Great Britain, or against the municipalities. We have incorporated that feature of the common law into our municipal jurisprudence; and States are not sued, as I recall. I looked into the matter a number of years ago when I was in the legislature of my own State, and there was not a single State in the Union that permitted itself to be sued at the will of any person who alleged that a tort had been committed by an agent or employee of the Government.

At the time to which I referred very few, if any, of the States had provided that counties might be sued for the alleged wrongful conduct or negligence of the officers, agents, or employees of the various counties. Municipalities have modified the rule and permitted suits where the work of the employees of the municipality was proprietary in contradistinction to governmental. My recollection now is that there are few, if any, of the cities of the United States in which the city may be sued for what might be called the governmental activities or for the negligence of employees who were discharging governmental activities in contradistinction to proprietary ones. I do not recall that there is a single city in the United States which may be sued for the tort of a policeman in seeking to execute the law. They may be sued, in view of statutes, where they have taken over, for instance, the construction of bridges. In such a case they may be sued if they construct an imperfect bridge, and as the result of negligence in the maintenance of the bridge an injury is received. But that is only because of a statute which authorizes it. It is a departure from the common law.

Mr. BAYARD. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Delaware?

Mr. KING. I yield.

Mr. BAYARD. Is the Senator quite sure he is up to date in that last suggestion?

Mr. KING. About cities being sued?

Mr. BAYARD. Yes.

Mr. KING. I stated that it was my recollection that at the time I made an investigation, as a member of the legislature, with respect to the alleged torts of policemen in arresting people, where they were performing purely governmental functions, the city was not amenable, and I think that is the law now; but that where it was in the performance of a proprietary duty the city could be sued, and that by virtue of a statute. It is possible some of the legislatures, since the investigation which I made, have provided that an aggrieved party may sue a city for the tort of a policeman in effecting an arrest, but I do not believe that is the case.

Mr. BAYARD. Does not the Senator think that the trend of modern law in this country is toward allowing suits to be brought for tort where an officer or agent officer has acted without the line of his duty?

Mr. KING. If the Senator says that it is, I will accept his word; but I do not think it is the law. Whether it is the trend, I am not able to state. I am merely stating what the common law was. That common law was adopted by the States of the Union and, so far as I know, there is not a State in the Union now that can be sued for the alleged torts or neglect of its officers.

Mr. BAYARD. I am not talking about the States; I am talking about the municipalities. From 1917 to 1919 I was city solicitor of my own city, and by reason of the fact that many suits were brought, I had to look into the law and study its history and bring it down to date. I found that the writers upon municipal law very generally held to the view that a city may be sued unless the charter given to the State exempted it from suit.

Mr. OVERMAN. Do they not differentiate a county in a State from a municipality?

Mr. BAYARD. The charter is given to a city by the State legislature, and in their charters are generally found the expression that they may sue and be sued at law or in equity. They do not limit the character of suits which may be brought. It is just a general, broad authority.

Mr. SWANSON. Under the Virginia law, carrying out the constitutional provision of Virginia, a county is a part of the sovereignty, a part of the State government. The municipalities get certain privileges, like any other corporation, except where they exercise a governmental function. If a man is hurt on the streets of a city, and it has not discharged its duty, he may recover damages. A county is a subdivision of the State government.

Mr. KING. I stated, and if the Senator had been here, he would have followed me, that the authorities differentiate between cities when the authorities are exercising what might be denominated public functions, and when they are performing what might de denominated proprietary or private functions.

Mr. SWANSON. Is Senate bill 1912 under discussion?

Mr. KING. Yes.

Mr. SWANSON. Senate bill 1912 simply does this——

Mr. KING. I know what it does.

Mr. SWANSON. It allows damages to be assessed, as I understand it, and provides that they must be reported to Congress for payment. I think that in this case the amount is too large for this authority to be given to the department. In the Naval Affairs Committee we limit the amount to a thousand dollars. During the war it might have been a little larger, but I have an idea that if we allow the departments to get such sums as this through, it will be found that it is too large. I think more cases of damage arise in connection with the Navy and the Army from airplanes, ships colliding, and so forth, than arise under any other department. If the Senator would reduce the amount to what is carried now in bills in connection with the Army and the Navy, I think the measure ought to be passed.

We already have a bill providing for a thousand dollars.

Mr. MEANS. That is in the exact language of the present law, and our deliberate purpose was to increase the amount to $5,000.

Mr. SWANSON. I do not object to this being increased to $2,000 or $2,500, but if we make it $5,000, five times what it is now, I am afraid the departments will be more lenient in a great many of these matters.

Mr. WILLIS. Mr. President, I submit a parliamentary inquiry. Are we not proceeding under Rule VIII, and if so, are not the addresses of Senators limited to five minutes?

The PRESIDING OFFICER. The Chair will so rule. The time of the Senator from Utah has more than expired.

Mr. WILLIS. I did not desire to take the Senator off the floor——

Mr. KING. I would not have consented that the bill be taken up under the five-minute rule, because it is a measure too important to be passed without discussion, and without being amended. I do not want to object to the Senate considering it.

Mr. WILLIS. Of course, the Senator has a right to object.

Mr. KING. I do not like to object. I would like to have the Senate consider it.

Mr. FESS. A parliamentary inquiry. I do not understand that we are limited to the consideration of unobjected bills. The Senator has a right to move to take it up notwithstanding the rule.

Mr. WILLIS. The bill is already before the Senate. The Senator from Utah has the right to object at any time, as I understand it. He can object now to the consideration of the bill.

Mr. KING. I do not like to object, because the Senator from Colorado has stated that I have objected upon a number of occasions. On the last two occasions I objected for the reason that a joint committee has been appointed by the Judiciary Committee and the Committee on Claims, as I understood, for the consideration of the entire subject matter, as to whether the Government of the United States ought to be sued, or establish agencies for the purpose of furnishing evidence by which it might be sued. I think it is a very serious question, particularly in view of the fact that measures have been pending here to increase the jurisdictional amount to $10,000. I think it is a very serious matter, and I do not think the Senate ought to pass so important a measure as this without due consideration, without knowing what the consequences and the effects would be. But if I am estopped under the five-minute rule, I can not debate it. I hope the Senate will not pass the bill until it is further considered.

Mr. FLETCHER. I move that the figures "$5,000" be changed to "$2,000."

Mr. MEANS. There would be no use in passing the bill if we should so amend it. It would be of absolutely no value, and be a useless thing.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Florida.

Mr. FLETCHER. I am willing to make it $2,500.

Mr. MEANS. The Senator from Virginia [Mr. SWANSON] just asked me to move to make the amount $3,000. I am perfectly willing to make it $3,000, if it is thought that $5,000 is too much. I am willing to accept an amendment making it $3,000, and we will try it at that rate.

Mr. FLETCHER. Then I move to make the amount $3,000.

Mr. MEANS. I accept that amendment, if I may be permitted to do so.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Florida, on page 2, line 4, to strike out "$5,000" and to insert in lieu thereof "$3,000."

The amendment was agreed to.

Mr. FLETCHER. The same amendment should be made on page 3, line 4, to strike out "$5,000" and to insert in lieu thereof "$3,000." I move that amendment.

The amendment was agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. KING. If the Senator from Colorado will permit me, I understood that the Attorney General had written a letter in which, if he did not express direct opposition, at least he did not assent to this legislation.

Mr. MEANS. I have not seen any such a letter at all or any objection to the bill at all on the part of the Attorney General. I have not seen such a letter.

The PRESIDING OFFICER. The question is, Shall the bill pass?

The bill was passed.

CONSIDERATION OF THE CALENDAR

Mr. GOODING. Mr. President, I ask unanimous consent that the consideration of the calendar be continued until 3 o'clock.

Mr. JONES of Washington. Does the Senator mean the consideration of unobjected bills on the calendar? If the Senator will apply his request to unobjected bills on the calendar, I shall have no objection.

Mr. SMOOT. That would be the only form in which I would consent to the request.

Mr. GOODING. Then I ask unanimous consent that we proceed with the calendar until 3 o'clock for the consideration of unobjected bills only.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

CONSTRUCTION OF PUBLIC BUILDINGS

The bill (H. R. 6559) for the construction of certain public buildings, and for other purposes, was announced as next in order.

Mr. FERNALD. Mr. President, I realize that it would be quite impossible to consider this bill in the limited time now. It is a very important measure, and most of the Senators desire to be present when the matter is taken up, so I shall ask that it go over. I want to say, however, that I hope to call the bill up in the very near future. It has been on the calendar for more than two months, and when the long and short haul bill shall have been disposed of I hope that we may take this bill up. I ask that it may go over for the present.

The PRESIDING OFFICER. The bill will be passed over.

RELIEF OF CERTAIN DISBURSING OFFICERS

The bill (S. 2158) for the relief of certain disbursing officers of the Superintendent State, War, and Navy Department Buildings was considered as in Committee of the Whole, and was read as follows:

Be it enacted, etc., That the Comptroller General of the United States is authorized and directed to credit the accounts of Frank W. Hoover and Edward F. Batchelor, disbursing officers, office of the Superintendent State, War, and Navy Department Buildings, in the sum of $24,000, disallowed upon vouchers Nos. 350, 224, 182, and 331 during the fiscal year ended June 30, 1923, and vouchers Nos. 41, 312, 313, and 487 during the fiscal year ended June 30, 1924.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

BILL PASSED OVER

The bill (S. 1824) for the relief of R. E. Swartz, W. J. Collier, and others was announced as next in order.

Mr. BAYARD. At the request of the senior Senator from Texas [Mr. SHEPPARD] I ask that the bill may go over.

The PRESIDING OFFICER. The bill will be passed over.

LIEUT. THOMAS J. RYAN, UNITED STATES NAVY

The bill (S. 1828) for the relief of Lieut. (Junior Grade) Thomas J. Ryan, United States Navy, was considered as in Committee of the Whole, and was read as follows:

Be it enacted, etc., That there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $1,221.65 to reimburse Lieut. (Junior Grade) Thomas J. Ryan, United States Navy, for the loss of uniforms, equipment, clothing, and personal effects of himself as a result of the earthquake and fire disaster in Japan on September 1, 1923.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

CHARLES WALL

The bill (S. 2083) for the relief of Charles Wall was considered as in Committee of the Whole.

The bill had been reported from the Committee on Naval Affairs with an amendment, on page 1, line 8, at the end of the bill, to insert a colon and a proviso, as follows: "*Provided*, That no back pay, allowances, or emoluments shall become due because of the passage of this act," so as to make the bill read:

Be it enacted, etc., That the President is authorized to appoint Charles Wall a lieutenant commander in the United States Naval Reserve Force, class 3 (in which grade and force he served honorably during the World War), and to retire him and place him upon the retired list of the Navy with the retired pay and emoluments of that grade: *Provided*, That no back pay, allowances, or emoluments shall become due because of the passage of this act.

The amendment was agreed to.

The bill was reported to the Senate as amended and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

JOHN CRONIN

The bill (S. 2085) to correct the naval record of John Cronin was considered as in Committee of the Whole.

The bill had been reported from the Committee on Naval Affairs with an amendment, to add at the end of the bill a colon and the following proviso: "*Provided*, That no back pension, allowance, or other emolument shall accrue prior to the passage of this act," so as to make the bill read:

Be it enacted, etc., That John Cronin, formerly seaman, United States Navy, be, and he is hereby, relieved of all disabilities attendant upon the dishonorable discharge received by him pursuant to sentence of general court-martial, March 18, 1899, and the Secretary of the Navy is hereby authorized and directed to review the naval record of the said John Cronin and grant him an honorable discharge: *Provided*, That no back pension, allowance, or other emolument shall accrue prior to the passage of this act.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

H. C. ERICSSON

The bill (S. 1456) authorizing the Court of Claims of the United States to hear and determine the claim of H. C. Ericsson was considered as in Committee of the Whole, and was read as follows:

Be it enacted, etc., That the United States Court of Claims be, and it is hereby, authorized and directed to hear and determine the claim of H. C. Ericsson for compensation for the adoption and use by the Government of the United States of a certain invention relating to an antiexplosive and noninflammable gasoline tank, for which letters patent of the United States, No. 1381175, was issued to him June 14, 1921. Said claim shall not be considered as barred because of the use of the patented device by the Government for more than two years, or by any existing statute of limitations, nor because of the fact that the claimant was in the military service of the United States at the time the patented article was invented.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

REFUND OF TAXES

The bill (S. 2526) to extend the time for the refunding of taxes erroneously collected from certain estates was announced as next in order.

Mr. JONES of Washington. May we have a brief explanation of that bill?

Mr. MEANS. Neither the Senator from Missouri [Mr. WILLIAMS], who introduced the bill, nor the Senator from Mississippi [Mr. STEPHENS], who reported it, is present.

Mr. WILLIS. I suggest that it be temporarily passed over without prejudice.

The PRESIDING OFFICER. Without prejudice, the bill will be passed over.

BILL PASSED OVER

The bill (S. 2336) to reimburse Commander Walter H. Allen, civil engineer, United States Navy, for losses sustained while carrying out his duties was announced as next in order.

Mr. McLEAN. Let that go over.

The PRESIDING OFFICER. The bill will be passed over.

AMENDMENT OF AGRICULTURAL CREDITS ACT OF 1923

The bill (S. 1544) to amend section 202 of the act of Congress approved March 4, 1923, known as the agricultural credits act of 1923, was announced as next in order.

Mr. McLEAN. I move that that bill be recommitted to the Committee on Banking and Currency.

The motion was agreed to.

JAMES C. MINON

The bill (S. 1885) for the relief of James C. Minon was considered as in Committee of the Whole.

The bill had been reported from the Committee on Naval Affairs with amendments, on line 5, after the word "James," to insert the letter "C" and a period; on line 8 to add a proviso at the end of the bill, as follows: "*Provided*, That no back pension, allowance, or other emolument shall accrue prior to the passage of this act," so as to make the bill read:

Be it enacted, etc., That in the administration of any laws conferring rights, privileges, and benefits upon honorably discharged men of the United States Navy, James C. Minon, formerly a landsman in the United States Navy, shall hereafter be held and considered to have been honorably discharged on the 20th day of November, 1898: *Provided*, That no back pension, allowance, or other emolument shall accrue prior to the passage of this act.

The amendments were agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read, "A bill for the relief of James C. Minon."

BILLS PASSED OVER

The bill (H. R. 7348) for the relief of Joseph F. Becker was announced as next in order.

Mr. SMOOT. I would like to know what the bill is before it is considered.

Mr. McLEAN. Let the bill go over.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 1859) for the relief of Patrick C. Wilkes, alias Clebourn P. Wilkes, was announced as next in order.

Mr. JONES of Washington. Let the bill be read.

Mr. HARRIS. I ask that it may go over. The Senator from Utah [Mr. KING] objected to the consideration of the bill the last time the calendar was called. I ask at this time that it may go over.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 1929) to provide home care for dependent children in the District of Columbia was announced as next in order.

Mr. MEANS. I ask that the bill may be passed over.

Mr. WADSWORTH. I give notice that I propose to offer an amendment when it is taken up for consideration. I send to the desk a copy of my amendment and ask that it may be printed and lie on the table to be considered at the time the bill is taken up.

The PRESIDING OFFICER. The amendment will be printed and lie on the table. The bill will be passed over.

The bill (S. 2607) for the purpose of more effectively meeting the obligations of the existing migratory bird treaty with Great Britain by the establishment of migratory bird refuges to furnish in perpetuity homes for migratory birds, the provision of funds for establishing such areas, and the furnishing of adequate protection of migratory birds, for the establishment of public shooting grounds to preserve the American system of free shooting, and for other purposes, was announced as next in order.

Mr. MEANS and Mr. KING. Let the bill go over.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 3031) for the relief of George Barrett was announced as next in order.

Mr. KING. Let the bill go over.

The PRESIDING OFFICER. It will be passed over.

The bill (S. 1459) for the relief of Waller V. Gibson was announced as next in order.

Mr. KING. Let the bill go over.

The PRESIDING OFFICER. The bill will be passed over.

The joint resolution (S. J. Res. 51) providing for the completion of the tomb of the Unknown Soldier in the Arlington National Cemetery was announced as next in order.

Mr. KING. Let it go over.

The PRESIDING OFFICER. The joint resolution will be passed over.

The bill (H. R. 306) to amend the second section of the act entitled "An act to pension the survivors of certain Indian wars from January 1, 1859, to January, 1891, inclusive, and for other purposes," approved March 4, 1917, as amended, was announced as next in order.

Mr. KING. I have an amendment that I desire to offer to the bill. May it be passed over temporarily?

The PRESIDING OFFICER. Without objection and without prejudice the bill will be passed over temporarily.

BILLS OF INTERPLEADER BY INSURANCE COMPANIES

The bill (S. 2296) authorizing insurance companies or associations or fraternal or beneficial societies to file bills of interpleader was considered as in Committee of the Whole, and was read as follows:

Be it enacted, etc., That the district courts of the United States shall have original jurisdiction to entertain and determine suits in equity begun by bills of interpleader duly verified, filed by any insurance company or association or fraternal or beneficial society, and averring that one or more persons who are bona fide claimants against such company, association, or society resides or reside within the territorial jurisdiction of said court; that such company, association, or society has issued a policy of insurance or certificate of membership providing for the payment of $500 or more as insurance, indemnity, or benefits to a beneficiary, beneficiaries, or the heirs, next of kin, legal representatives, or assignee of the person insured or member; that two or more adverse claimants, citizens of different States, are claiming to be entitled to such insurance, indemnity, or benefits; that such company, association, or society has paid the amount thereof into the registry of the court, there to abide the judgment of the court.

SEC. 2. In all such cases if the policy or certificate is drawn payable to the estate of the insured and has not been assigned in accordance with the terms of the policy or certificate, the district court of the district of the residence of the personal representative of the insured shall have jurisdiction of such suit. In case the policy or certificate has been assigned during the life of the insured in accordance with the terms of the policy or certificate, the district court of the district of the residence of the assignee or of his personal representative shall have jurisdiction. In case the policy or certificate is drawn payable to a beneficiary or beneficiaries and there has been no such assignment as aforesaid the jurisdiction shall be in the district court of the district in which the beneficiary or beneficiaries or their personal representatives reside. In case there are beneficiaries resident in more districts than one, then jurisdiction shall be in the district court in any district in which a beneficiary or the personal representative of a deceased beneficiary resides. Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any other Federal court on such policy

or certificate of membership until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

SEC. 3. Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be suitable and proper, and issue all such customary writs as may be necessary or convenient to carry out and enforce the same.

SEC. 4. Public Act No. 346, Sixty-fourth Congress, entitled "An act authorizing insurance companies and fraternal beneficiary societies to file bills of interpleader," approved February 22, 1917, and Public Act No. 465, Sixty-eighth Congress, entitled "An act to amend an act entitled 'An act authorizing insurance companies or associations and fraternal beneficiary societies to file bills of interpleader,' approved February 22, 1917," approved February 25, 1925, be, and the same are hereby, repealed. Said repeal shall not affect any act done or any right, accruing or accrued in any suit or proceeding had or commenced under said acts hereby repealed, prior to the passage of this act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said acts had not been repealed hereby.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

BILLS PASSED OVER

The bill (H. R. 6536) to amend section 129 of the Judicial Code, relating to appeals in admiralty cases, was announced as next in order.

Mr. McNARY. Let the bill go over.

Mr. BAYARD. I am under the impression that the Senate passed a measure on the same subject a short time since and that it has gone to the House. There is some difference between the measures as passed by the House and by the Senate. I will ask that the bill may go over until the Senator from Iowa [Mr. CUMMINS] is here.

The PRESIDING OFFICER. The bill will be passed over.

The joint resolution (S. J. Res. 2) for the relief of George Horton was announced as next in order.

Mr. SMOOT. Let the joint resolution go over.

The PRESIDING OFFICER. It will be passed over.

The bill (S. 756) directing the Secretary of the Treasury to complete purchases of silver under the act of April 23, 1918, commonly known as the Pittman Act, was announced as next in order.

Mr. WADSWORTH. I ask that the bill may go over.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 2111) for the relief of Levin P. Kelly was announced as next in order.

Mr. WADSWORTH. Let it go over.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 2808) to amend section 24 of the interstate commerce act as amended was announced as next in order.

Mr. WADSWORTH. Let it go over.

The PRESIDING OFFICER. The bill will be passed over.

LIGHTER "EASTMAN NO. 14"

The bill (S. 99) for the relief of the owner of the lighter *Eastman No. 14* was considered as in Committee of the Whole, and was read as follows:

Be it enacted, etc., That the claim of Franklin P. Eastman, owner of the lighter *Eastman No. 14*, against the United States of America for damages alleged to have been caused by a collision on November 26, 1918, between the said lighter *Eastman No. 14* and the United States steamship *Wakulla* at the Thirty-first Street Pier, Brooklyn, N. Y., while the said steamship *Wakulla* was owned by the United States of America and was being operated in its naval transport service, may be sued for by the said Franklin P. Eastman in the District Court of the United States for the Southern District of New York, sitting as a court of admiralty and acting under the rules governing such court; and said court shall have jurisdiction to hear and determine such suit and to enter a judgment or decree for the amount of such damages and costs, if any, as shall be found to be due against the United States in favor of Franklin P. Eastman, or against Franklin P. Eastman in favor of the United States, upon the same principles and measures of liability as in like cases in admiralty between private parties, and with the same rights of appeal: *Provided*, That such notice of the suit shall be given to the Attorney General of the United States as may be provided by order of the said court; and it shall be the duty of the Attorney General to cause the United States attorney in such district to appear and defend for the United States: *Provided further*, That said suit shall be brought and commenced within four months from the date of the passage of this act.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

REIMBURSEMENT OF CERTAIN FIRE INSURANCE COMPANIES

The bill (S. 3019) to reimburse certain fire-insurance companies the amounts paid by them for property destroyed by fire in suppressing bubonic plague in the Territory of Hawaii in the years 1899 and 1900 was announced as next in order.

Mr. SMOOT. Mr. President, I wish to ask the Senator from Delaware [Mr. BAYARD], who reported the bill, if these are the same insurance companies that were included in a bill which passed the Senate some years ago?

Mr. BAYARD. May I state the facts of the case to the Senator and possibly answer his question in that way? There were a number of buildings in Hawaii, which were destroyed by order of the authorities by reason of the bubonic plague. They were destroyed in toto with their contents. On them insurance had been effected. That insurance was all paid to the people who had effected the insurance. The bill is to reimburse the insurance companies who had paid dollar for dollar the amount required under the insurance policies. The accounts have been gone into with great exactness, and the whole thing is fully approved of by the proper department.

Mr. SMOOT. My question was this: I remember a bill of this character passing the Senate on two previous occasions. I want to know whether the insurance companies covered by the present bill were included in a bill that has already passed for this very purpose, or whether the passage of the bill through the Senate ended the matter, and it did not pass in the House, thus requiring the passage of another bill through the Senate. I am fully aware of the circumstances referred to by the Senator. I know what took place. I know that the buildings were destroyed. I know, too, that a bill of this character has passed the Senate before, and I want to know whether these are additional insurance companies or whether they are the ones provided for in the Senate bill that failed in the House.

Mr. BAYARD. I have looked into the case with the greatest care and verified the names of the insurance companies and the amounts. I went over the list as set forth in the report and checked the whole matter. I am quite sure, no matter what happened in the other House of Congress, that so far as the Senate is concerned this is an original bill. I believe a similar bill has passed before, but this is original action on the part of the Senate.

Mr. HARRELD. Mr. President, I think I can enlighten the Senator from Utah. I introduced the bill last year and it passed, but it failed to go through the House. The report shows that a similar bill has been passed two or three times, but failed of passage in the House.

Mr. SMOOT. I know that the legislation passed this body at least twice and possibly three times.

Mr. HARRELD. This is an identical bill. There are no new companies involved.

Mr. SMOOT. The House has always failed to pass the bill. These are the same companies that were provided for in the bills previously passed by the Senate?

Mr. HARRELD. Yes; it is exactly the same as the bill I introduced last year.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the bill was considered as in Committee of the Whole, and was read as follows:

Be it enacted, etc., That there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $85,975, to pay to the Royal Insurance Co., $25,100; the Trans-Atlantic Fire Insurance Co., $9,500; Prussian National Fire Insurance Co., $2,850; North German Fire Insurance Co., $8,000; Hamburg-Bremen Fire Insurance Co., $10,450; Liverpool & London & Globe Insurance Co., $6,900; New Zealand Insurance Co., $6,025; Fireman's Fund Insurance Co., $9,250; National Fire Insurance Co. of Hartford, Conn., $4,150; Caledonian Insurance Co., of Edinburgh, Scotland, $750; North British Mercantile Insurance Co., $3,000, the aforesaid sums being the amounts paid by each of the said companies on account of insurance against fire on property in the Territory of Hawaii, which property was destroyed by the Government in the suppression of the bubonic plague in said Territory in the years 1899 and 1900.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

CLAIMS OF ASSINIBOINE AND CROW INDIANS

Mr. JONES of Washington. Mr. President, on Saturday two bills, Nos. 350 and 351 on the calendar, were called up and considered by unanimous consent and passed. Since that was done some phases of the situation have been brought to my attention and I think the measures should be recalled for reconsideration. I desire at this time to enter a motion to reconsider the votes by which the two bills were ordered to a third reading and passed, being the bill (S. 2141) conferring jurisdiction upon the Court of Claims to hear, examine, adjudicate, and enter judgment in any claims which the Assiniboine Indians may have against the United States, and for other purposes; and the bill (S. 2868) conferring jurisdiction upon the Court of Claims to hear, examine, adjudicate, and enter judgment in any claims which the Crow Indians may have against the United States, and for other purposes. If the measures have gone to the House I ask unanimous consent that a request may be submitted to the House to have them returned to the Senate.

The PRESIDING OFFICER. Is there objection? The Chair hears none. The motion to reconsider will be entered, and the House will be requested to return the bills.

REGULATION OF IMPORTATION OF GRAIN AND SEEDS

The bill (S. 2465) to amend the act entitled "An act to regulate foreign commerce, prohibiting the admission into the United States of certain adulterated grain and seed unfit for seeding purposes," of date August 24, 1912, as amended, and for other purposes, was announced as next in order.

Mr. WADSWORTH. Let the bill go over.

Mr. GOODING. Mr. President, I hope the Senator will withhold his objection for a few minutes while I explain the bill. This is a very important measure, not only to the eastern farmers but to the western farmers. The bill was prepared by the Department of Agriculture. For many years this country has been made the dumping ground for worthless seed, seed that is not adaptable in many States. This bill provides that hearings shall be held by the Department of Agriculture, and when it is found that seed from any country is not adaptable for use in this country the bill provides that 10 per cent of all such seed shall be stained a red color. All foreign seeds are to be stained, but where it is found adaptable, the staining is to be very light, not more than 1 per cent. As far as possible the staining will be of such a color as to show the country of origin, so the farmers in buying seed anywhere in the United States will know whether they are buying foreign or domestic seed; and I am told, Mr. President, that practically every agricultural college in this country is asking for the passage of this measure.

The PRESIDING OFFICER. Objection has been made. Is it withdrawn?

Mr. BAYARD. The calendar shows that no report has been filed. Was a report made?

Mr. GOODING. No report was made. The report of the committee has been made, but no formal report accompanies the bill.

Mr. BAYARD. Will the passage of the bill accomplish a thing which we had up the other day—not before this body, but before the country and certainly before the Department of Agriculture—whereby the Department of Agriculture, in establishing a quarantine against certain bulbs also, through its agents, directly or indirectly, admitted that they were putting up the theory of protection; that is to say, they intended to place the quarantine upon certain bulbs where they were able to grow the bulbs in this country, to get away from the importation of foreign-grown bulbs. Would this act in any way tend to that effect?

Mr. GOODING. Not at all. This only applies to grass seeds.

Mr. WILLIS. Mr. President, if I may interrupt the Senator, not only does it only apply to grass seed, but it is not supposed to exclude the importation of grass seeds at all. It only requires that they shall be colored so the purchaser may know whence the seed comes.

Mr. GOODING. That is all; in order that the farmer who buys seeds may know whether he is buying a seed adaptable for use in this country.

Mr. FLETCHER. Mr. President, may I ask the Senator if there is a recommendation by the Department of Agriculture?

Mr. GOODING. Yes. The bill was prepared by the Department of Agriculture, approved by the Secretary of Agriculture, and a representative of the department appeared before the committee in behalf of the bill and made a statement. The matter has been under consideration by the Department of Agriculture for a number of years. No one opposes the bill with the exception of a few importers.

Mr. MEANS. Why is there no report with the bill?

Mr. GOODING. No report was made, I am sorry to say, but I think I can explain the bill, however, to the satisfaction of any Senator.

The PRESIDING OFFICER. Is there objection to the consideration of the bill withdrawn?

Mr. WADSWORTH. I would like to make an observation or two about it and perhaps ask some questions after the Senator from Idaho has concluded.

Mr. GOODING. I shall be glad to answer any question.

There was a statement made by the agronomist of the Agricultural College of North Carolina in the hearings on this bill in which he said:

> I want to call your attention to that most recent piece of work of Professor Hughes, of the Iowa Experiment Station, where he secured through the State seed laboratory 120 samples of red clover as it was being sold in the State of Iowa He found when he planted those 120 samples side by side that 12 per cent of them were straight imported seeds and that from 30 to 40 per cent of that lot of 120 samples were either straights or blends of imported and domestic seed.

I want to say to Senators, so far as those from the Eastern States are concerned, that millions of acres of land have been abandoned in the eastern part of the United States because the farmers could not get a catch of alfalfa or clover seed, more especially the latter. Italian clover seed coming into this country is not adaptable at all, and if planted would grow but would not stand the first winter.

Mr. President, alfalfa and clover seed are the greatest fertilizers the world knows. Alfalfa and clover are planted largely as a rotation crop for the improvement of the soil. It is through the roots of clover and alfalfa that nitrogen is carried into the soil, and quite often the farmers plow under a crop of clover or alfalfa and in this way put back into the soil vegetable mold, or humus, generally called green manure. This, Mr. President, is the cheapest and easiest method for the farmer to keep up the fertility of the soil, but a few failures to get the catch of clover often means the soil becomes exhausted and is in many cases abandoned.

It would seem to me, with farmers all over the country asking for this bill, with practically every agricultural college in the country, together with the National Grange, the national dairy organizations, and the farm bureaus, being in favor of the enactment of the measure, there should be no opposition to it. It provides merely an opportunity for the farmers to know, when they buy seed, from what country it has come and whether it is domestic seed or foreign seed, and whether it can be planted with safety.

If the Senator from New York will withdraw his objection so that the bill may be discussed, there are several Senators interested who desire to discuss it. It is of vital importance to the farmers of the East, more so than it is to the farmers of the West. There are about 9,000,000 pounds of seed imported annually. I do not think it is going to injure seeds that are adaptable to this country, because the farmers will know by the color what country the seed comes from. It is a matter of education, and surely no one should object to passing a bill that will permit the Secretary of Agriculture, if he finds after a hearing that the seed is not adaptable in some State of the Union, to protect the farmers from importers who bring the seeds here and mix them with American seed. The foreign seed is brought here for less than the importer would have to pay for American seed, so it is not strange it is found an advantage to mix the foreign with the domestic seed.

The PRESIDING OFFICER. Under the five-minute rule the Senator's time has expired.

Mr. WADSWORTH. Mr. President, I take as deep an interest in the matter of purity of seeds as, I think, any Senator in the Chamber. Without meaning to inject a personal element into the debate, I might be deemed to fall in the category mentioned by the Senator from Idaho of an eastern farmer. As a matter of fact, I have had to purchase a good deal of seed and to use it. I call the attention of Senators present to the first sentence in the proviso of the bill, commencing on line 5, page 2, which reads:

> *Provided further,* That hereafter before entry into the United States seed of alfalfa or red clover or any mixtures of seeds containing 10 per cent or more of either or both of these seeds shall be colored or marked in such manner as the Secretary of Agriculture may prescribe, and such colors or marks shall, where practicable, indicate the country or region of origin.

Mr. President, of course I think everyone conversant with farming will admit that upon occasion seeds are developed in foreign countries which may be peculiarly adaptable to the needs of certain portions of agricultural United States, just as we in this country upon occasion develop seeds which may be

useful in other countries or in certain other portions of the world. This bill provides that whenever any alfalfa or red clover seed grown abroad is shipped into this country it must be stained some false color. That means—and I am sure Senators will all realize it—that it will not be purchased in the market in this country. Farmers will not buy seeds which are stained green or dark brown. The mere fact that seeds are stained some artificial color puts the stamp of suspicion on them. To my mind this bill, in effect, threatens an embargo on the importation of valuable seeds into the United States, because according to its terms those seeds must be stained. It is just as if we should pass an act providing that all butter made abroad shall be stained green when it is imported into the United States. It would not be purchased on our markets.

Mr. WATSON. I should like to ask the Senator a question for information.

The PRESIDING OFFICER. Does the Senator from New York yield to the Senator from Indiana?

Mr. WADSWORTH. I yield.

Mr. WATSON. I am not familiar with the subject, and should like to inquire if the staining of such seeds would interfere with their germination?

Mr. WADSWORTH. I assume that the staining matter would be so devised as not to interfere with the germination of the seed. The Senator must know, of course, that if samples of seed are displayed at a seed or feed store in an agricultural community on Main Street and they bear peculiar and unusual color, the farmer, who is the ordinary customer for such seed, simply will not buy them, but will buy seed of the natural color, which may be in some instances inferior for the purpose which he has in view.

Mr. SMOOT. Mr. President——

The PRESIDING OFFICER. Does the Senator from New York yield to the Senator from Utah?

Mr. WADSWORTH. I yield.

Mr. SMOOT. I desire to call the attention of the Senator from New York to the fact that the seeds referred to in this instance are those of alfalfa and red clover.

Mr. WADSWORTH. Yes.

Mr. SMOOT. I desire to ask, does the Senator know of any special class of red clover or alfalfa seed, such as he referred to in his opening statement?

Mr. WADSWORTH. Yes; there have been in the past some very valuable alfalfa seeds brought from Northern Africa and Asia Minor. There are also certain alfalfa seeds that have come from other countries; there are some very valuable seeds which have been produced in Canada.

Mr. SMOOT. I know. They come from other countries; but I was wondering whether there were any really special alfalfa or clover seeds from foreign countries that would increase the crop or produce a better quality than is produced by seeds grown in the United States.

Mr. WADSWORTH. Yes; upon occasion foreign countries develop a new seed, a new type, perhaps, of an old class of plant, but a new type of seed. If they do so, even though it be conceded that for certain purposes in certain portions of the country such seeds are better than those we have as yet developed, if this bill shall become a law, such seeds must be stained some queer, strange color before they can be admitted into the United States. That, in my judgment, would mean that such seeds could not find a market here.

The PRESIDING OFFICER. The time of the Senator from New York has expired.

Mr. FESS. Mr. President, it appears to me that the objection offered by the Senator from New York is not tenable, because the language of the bill does not mean that the entire importation is to be stained; it simply means that a sample of the seed is to be stained, a quantity of it, 10 per cent, for example.

Mr. WADSWORTH. No; the whole quantity must be stained.

Mr. LENROOT. No; 10 per cent.

Mr. WADSWORTH. It must be put on the market stained.

Mr. SMOOT. Only 10 per cent of the mixture is required to be stained.

Mr. GOODING. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield, and if so, to whom?

Mr. FESS. Mr. President, I understand that the object of this legislation is to identify the place whence the seed comes. I have not understood at any time that all the seed which was to be imported was to be stained; that the entire quantity was to be stained a certain color.

Mr. GOODING. The bill provides that if, after an investigation and a hearing by the Secretary of Agriculture, the particular kind of seed is found to be unadaptable for use in some of the States of the Union, where if planted it would be a very serious matter to the farmer, 10 per cent of such seed shall be stained.

Mr. WADSWORTH. The language does not read in that way; it does not depend upon whether it is suitable or not.

Mr. GOODING. Yes.

Mr. FESS. I am in sympathy with the friends of the legislation.

Mr. GOODING. Where the seed is found to be adaptable there is only a certain quantity to be stained, and the matter is left entirely to the Secretary of Agriculture; it is all in his discretion.

Mr. WADSWORTH. No; the language is mandatory.

Mr. FERRIS. Mr. President, I can not understand the force of the objection offered by the Senator from New York. It seems to me that the agricultural colleges of this country ought to know pretty well what would be useful in this line. For my own guidance, I rely greatly upon the State Agricultural College of Michigan, also upon the farm organizations of that State. I find that other agricultural colleges have given their assent to this plan and that the farmers generally demand it.

Of course, it is a matter of education, but I can not understand why, if the farmers want to protect themselves, they should not investigate and understand why this coloration is indulged in. So, Mr. President, I feel that the objection offered by the Senator from New York is really a reflection upon the intelligence of the farmers of America and that the plan proposed is so simple and so important that it must work out for their benefit. I sincerely hope that this bill may be passed immediately, because it is wanted now and not several years later.

Mr. WADSWORTH. Mr. President, I know that perhaps I am transgressing the rule in regard to the limitation of speeches, but I ask unanimous consent to make a brief statement.

The PRESIDING OFFICER. Is there objection? The Chair hears none. The Senator from New York will proceed.

Mr. WADSWORTH. Mr. President, I hope I have not reflected upon the intelligence of the farmers of America, especially when I am making a suggestion that the ultimate effect of legislation of this kind will be to increase the cost of seed to the farmers.

Under the five-minute rule it is quite impossible to discuss a measure of this kind, and I can not withdraw my objection.

The PRESIDING OFFICER. The objection is insisted upon.

Mr. GOODING. Mr. President, I move that the bill be taken up notwithstanding the objection.

Mr. SMOOT. Under the unanimous-consent agreement that can not be done.

Mr. GOODING. Very well.

The PRESIDING OFFICER. The next bill on the calendar will be stated.

AMERICAN BARGE "TEXACO NO. 153"

The Senate, as in Committee of the Whole, proceeded to consider the bill (S. 113) for the relief of the owner of the American barge *Texaco No. 153*, which was read as follows:

Be it enacted, etc., That the claim of the Texas Co., owner of the American barge *Texaco No. 153*, against the United States of America for damages alleged to have been caused by collision between said vessel and the United States Coast Guard steam tug *No. 84*, on or about the 4th day of November, 1919, at or near the dock of the Texas Co., at Bayonne, N. J., may be sued for by the said Texas Co. in the District Court of the United States for the District of New Jersey, sitting as a court of admiralty and acting under the rules governing such court; and said court shall have jurisdiction to hear and determine such suit and to enter a judgment or decree for the amount of such damages and costs, if any, as shall be found to be due against the United States in favor of the owner of the said American barge *Texaco No. 153*, or against the owner of the said American barge *Texaco No. 153* in favor of the United States, upon the same principles and measures of liability as in like cases in admiralty between private parties and with the same rights of appeal: *Provided*, That such notice of the suit shall be given to the Attorney General of the United States as may be provided by order of the said court, and it shall be the duty of the Attorney General to cause the United States attorney in such district to appear and defend for the United States: *Provided further*, That said suit shall be brought and commenced within four months of the date of the passage of this act.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

F. M. GRAY, JR., CO.

The Senate, as in Committee of the Whole, proceeded to consider the bill (S. 646) for the relief of F. M. Gray, jr., Co., which was read as follows:

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to F. M. Gray, jr., Co., of Milwaukee, Wis., the sum of $2,500, being the amount of damages incurred between the 12th day of December, 1921, and the 31st day of March, 1922, by reason of the action of the Engineering Department of the Government shutting off the water and steam at well being drilled at the Edward Hines, Jr., Hospital, Chicago, Ill.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

BILLS PASSED OVER

The bill (S. 1803) for the relief of Walter W. Price was announced as next in order.

Mr. SMOOT. I ask that that bill be passed over.

Mr. McKELLAR. I hope the Senator will not object to that bill. I think it was passed by the Senate during the last Congress.

Mr. SMOOT. I should like to have the bill go over now.

Mr. McKELLAR. Very well.

Tht PRESIDING OFFICER. The bill will be passed over.

The bill (S. 2098) for the relief of M. Barde & Sons (Inc.), Portland, Oreg., was announced as next in order.

Mr. KING. I ask that that bill go over.

The PRESIDING OFFICER. The bill will be passed over.

JOHN H. GATTIS

The bill (S. 3074) for the relief of John H. Gattis, was considered as in Committee of the Whole, and was read as follows:

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to John H. Gattis the sum of $200 in full payment for permanent injury caused by a fall from a ladder while working at the Government Printing Office, in the year 1914, and the said sum of $200 is hereby appropriated for such purpose out of any money in the Treasury not otherwise appropriated.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

CANVASSING BOARD FOR ALASKA

The bill (S. 2529) to amend an act approved May 7, 1906, entitled "An act providing for the election of a Delegate to the House of Representatives from the Territory of Alaska," was announced as next in order.

Mr. WILLIS. Mr. President, I desire to ask unanimous consent that instead of considering the bill, the title of which has just been read, the Senate consider Order of Business No. 262, being House bill 7820, which is identical with the Senate bill. The House bill has also been considered by the Committee on Territories and Insular Possessions and has been reported with the same amendment which the committee recommended to Senate bill 2529. I ask that Order of Business No. 262, being House bill 7820, may be now considered, and, if that shall be done, I will move the indefinite postponement of the Senate bill.

Mr. ROBINSON of Arkansas. Mr. President, may I inquire whether the House bill has been reported with the same amendment as the one proposed by the committee and incorporated by the committee in the Senate bill?

Mr. WILLIS. Precisely the same amendment which was recommended by the committee in the case of the Senate bill has been reported to the House bill.

The PRESIDING OFFICER. Is there objection to the House bill being substituted for the Senate bill and being considered at this time?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 7820) to amend an act entitled "An act providing for the election of a Delegate to the House of Representatives from the Territory of Alaska," approved May 7, 1906, which had been reported from the Committee on Territories and Insular Possessions with an amendment, on page 1, line 9, after the word "the," to strike out "collector of customs for Alaska," and insert "national committeeman for Alaska representing the chief political party in opposition to that party of which the Governor of Alaska is a member," so as to make the bill read:

Be it enacted, etc., That the first paragraph of section 12 of the act entitled "An act providing for the election of a Delegate to the House of Representatives from the Territory of Alaska," approved May 7, 1906, is hereby amended to read as follows:

"SEC. 12. That the governor, the secretary for the Territory, and the national committeeman for Alaska representing the chief political party in opposition to that party of which the Governor of Alaska is a member shall constitute a canvassing board for the Territory of Alaska to canvass and compile in writing the vote specified in the certificates of election returned to the governor from all the several election precincts as aforesaid."

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

Mr. KING. Mr. President, I should like to ask the Senator from Ohio as to the reason for this most extraordinary legislation?

Mr. WILLIS. Very well. Mr. President, I shall be glad to explain the measure, if I may be permitted to do so.

Mr. KING. It seems rather remarkable that we should provide that the representative of a political party shall be a part of the canvassing machinery of the Territory of Alaska.

Mr. WILLIS. Mr. President, here is precisely the reason: The old law provided that the canvassing board should consist of the governor, the secretary of the Territory, and the surveyor general. By legislation we abolished the office of surveyor general, consequently there was no canvassing board, and is now no canvassing board at all. It was suggested by the department that we ought to remedy that in some fashion, and the department made a suggestion that the board should consist of the governor, the secretary of the Territory, and the collector of customs. The able Senator from Arkansas [Mr. ROBINSON] very properly, in my judgment, suggested in committee that as a result of that legislation it would inevitably happen that all the members of the canvassing board would belong to the same political party; and he suggested—and I quite agreed with him, and the members of the committee did also—that it ought to be arranged so that a canvassing board should be bipartisan. So this amendment was adopted by the committee at the suggestion of the senior Senator from Arkansas, and I think it is a very proper amendment.

Mr. ROBINSON of Arkansas rose.

Mr. WILLIS. I notice the Senator from Arkansas is on his feet, and I wish that he would make a statement about the matter.

Mr. ROBINSON of Arkansas. Mr. President, in addition to what has just been stated by the Senator from Ohio I will say that the bill as originally drafted would create a canvassing board to canvass the election returns in the Territory of Alaska composed entirely of appointees of the President, representatives of the political party in power. I felt, and the committee agreed with me unanimously, that it was both desirable and fair that the board should have on it at least one representative of the chief party in opposition to the political party in power, in order to insure fairness in the action of the canvassing board. I can not conceive of any theory upon which it can be objected to.

I think I ought to say that there was a question in the minds of the members of the committee as to how best to accomplish the end desired, namely, to make the board bipartisan. After some considerable discussion of the subject the amendment that was reported by the committee was agreed to, making the national committeeman of the chief party in opposition to the party represented by the governor the third member of the board.

Mr. WILLIS. Mr. President, the statement of the Senator is absolutely accurate, and I suggest further, to explain the matter, that the report of the committee, which is very brief, be printed in the RECORD at this point for information.

The PRESIDING OFFICER. Without objection, it will be so ordered.

The report (No. 260) submitted by Mr. WILLIS on the calendar day of March 4, 1926, is as follows:

Mr. WILLIS, from the Committee on Territories and Insular Possessions, submitted the following report to accompany H. R. 7820:

The Committee on Territories and Insular Possessions, to whom was referred the bill (H. R. 7820) to amend an act entitled "An act providing for the election of a Delegate to the House of Representatives from the Territory of Alaska," approved May 7, 1906, having considered the same, report it to the Senate with the recommendation that the bill do pass with the following amendment:

On page 1, line 9, strike out the words "collector of customs for Alaska" and in lieu thereof insert the following: "national committeeman for Alaska representing the chief political party in opposition to that party of which the Governor of Alaska is a member."

This amendment is suggested in order that the board may be bipartisan.

The Secretary of the Interior submitted the following communication in regard to the necessity for an amendment of this act:

THE SECRETARY OF THE INTERIOR,
Washington, January 21, 1926.

Hon. FRANK B. WILLIS,
Chairman of the Committee on Territories and Insular Possessions, United States Senate.

MY DEAR SENATOR WILLIS: Your letter of January 16, 1926, has been received inclosing with request for report thereon Senate bill 2529,

entitled "A bill to amend an act approved May 7, 1906, entitled 'An act providing for the election of a Delegate to the House of Representatives from the Territory of Alaska.'"

In response thereto I have to state that the surveyor general of the Territory of Alaska, under the provisions of the act of June 6, 1900 (31 Stat. 321), was made ex officio secretary of the Territory at a compensation of $4,000 per annum, and required, in case of the death, removal, resignation, or absence of the governor, to perform all the duties devolving upon the governor. By the act of March 3, 1925 (43 Stat. 1144), the office of surveyor general of the Territory of Alaska was abolished, effective July 1, 1925.

The question of providing a secretary for the Territory after that date, under the provisions of section 1843 of the Revised Statutes United States, was submitted to the Attorney General, who held, May 27, 1925, that section 3 of the act of June 6, 1900, had been repealed, that section 1843 of the Revised Statutes United States, applied to the Territory of Alaska, and that the President might, in pursuance of his constitutional power and the provisions of the aforesaid act, appoint a secretary of the Territory. Accordingly, on June 11, 1925, Mr. Karl Theile, surveyor general of Alaska, was duly commissioned secretary of the Territory of Alaska, effective July 1, 1925, entered upon duty, and is now acting governor of the Territory in the absence of the governor.

Under section 12 of the act of May 7, 1906 (34 Stat. 173), the surveyor general acted as a member of the election canvassing board of the Territory. In order that this board may function it will be necessary to amend the act so as to substitute for the surveyor general the secretary of the Territory. Elections for Territorial legislature and Delegate will be held this year, and certificates can not be issued by a canvassing board unless this bill is enacted.

I have to recommend early and favorable consideration of the bill.

Very truly yours,

HUBERT WORK.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. WILLIS. Now, Mr. President, I move that Order of Business 219, being Senate bill 2529, be indefinitely postponed.

The motion to postpone indefinitely was agreed to.

DISPOSITION OF MONEYS OF INSANE OF ALASKA

The bill (S. 3213) to provide for the disposition of moneys of the legally adjudged insane of Alaska who have been cared for by the Secretary of the Interior was considered as in Committee of the Whole.

The bill had been reported from the Committee on Territories and Insular Possessions with amendments, on page 1, line 7, after the word "institution," to insert "or under the care of such person, firm, or corporation"; on page 2, line 3, after the word "institution," to insert "or the care of such person, firm, or corporation"; in line 6, after the word "institution," to insert "or the care of such person, firm, or corporation"; in line 8, after the word "shall," to insert "at the end of five years from the passage of this act"; and in line 18, after the word "institution," to insert "person, firm, or corporation," so as to make the bill read:

Be it enacted, etc., That hereafter all moneys belonging to persons legally adjudged insane in the Territory of Alaska and deposited by them with the person, firm, corporation, or institution under contract with the Department of the Interior for the care of the Alaskan insane who have died in such institution, or under the care of such person, firm, or corporation, been discharged therefrom, or who have eloped and whose whereabouts is unknown, shall, if unclaimed by said person or their legal heirs within the period of five years from the time of death of the person or the date of the leaving of the institution, or the care of such person, firm, or corporation, be covered into the Treasury by the Secretary of the Interior: *Provided, however*, That the unclaimed moneys belonging to those who have heretofore died or left the institution, or the care of such person, firm, or corporation, prior to the date of this act shall, at the end of five years from the passage of this act, also be deposited in the Treasury, subject, however, to reclamation by such persons or their legal heirs within five years from the date of this act.

SEC. 2. The Secretary of the Interior is authorized and directed under such regulations as he may prescribe, to make, or cause diligent inquiry to be made, in every instance after the death, discharge, or elopement of any legally adjudged insane person of Alaska, to ascertain his whereabouts, or that of his or her legal heirs, and thereafter turn over to the proper party any moneys in the hands of the institution, person, firm, or corporation, etc., to the credit of such person. Claims may be presented to the Secretary of the Interior hereunder at any time, and when established by competent proof in any case more than five years after the death, discharge, or elopement of such legally adjudged insane person of Alaska, shall be certified to Congress for consideration.

The amendments were agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. WILLIS. Mr. President, this is a very important measure, and the Senator from Delaware [Mr. BAYARD] made a very able and illuminating brief report on it. I suggest that it be printed in the RECORD at this point.

The PRESIDING OFFICER. Is there objection? Without objection, the report will be printed in the RECORD.

The report (No. 215) submitted by Mr. BAYARD on February 24, 1926, is as follows:

Mr. BAYARD, from the Committee on Territories and Insular Possessions, submitted the following report, to accompany S. 3213:

The Committee on Territories and Insular Possessions, to whom was referred (S. 3213) a bill to provide for the disposition of moneys of the legally adjudged insane of Alaska who have been cared for by the Secretary of the Interior, having considered same, report it to the Senate with the recommendation that the bill do pass with the following amendments:

On page 1, line 7, after the comma insert the words "or under the care of such person, firm, or corporation."

On page 2, line 1, after the comma insert the words "or the care of such person, firm, or corporation."

On page 2, line 4, after the word "institution" insert a comma and the words "or the care of such person, firm, or corporation."

On page 2, line 4, after the word "shall" insert the words "at the end of five years from the passage of this act."

On page 2, line 14, after the comma insert the words "person, firm, or corporation."

This bill is recommended by the Secretary of the Interior in the following communication:

THE SECRETARY OF THE INTERIOR,
Washington, February 16, 1926.

Hon. FRANK B. WILLIS,
Chairman Committee on Territories and
Insular Possessions, United States Senate.

MY DEAR SENATOR WILLIS: Section 7 of the act entitled "An act relating to affairs in the Territories," approved February 6, 1909 (35 Stat. 601), states:

"That the Secretary of the Interior shall hereafter, as in his judgment may be deemed advisable, advertise for and receive bids for the care and custody of persons legally adjudged insane in the District of Alaska, and in behalf of the United States shall contract, for one or more years, as he may deem best, with a responsible asylum or sanitarium, west of the main range of the Rocky Mountains, submitting the lowest and best responsible bid for the care and custody of persons legally adjudged insane in the said District of Alaska, the cost of advertising for bids, executing the contract, and caring for the insane to be paid from appropriations to be made for such service upon estimates to be submitted to Congress annually."

Under this authority contract was entered into on January 25, 1919, with the Sanitarium Co., of Portland, Oreg., for the care of the legally adjudged insane of Alaska for a period of five years from and including January 16, 1920, and on December 14, 1923, a new contract was entered into with the Sanitarium Co. for the care of the Alaskan insane for a period of five years from and including January 16, 1925.

There has been accumulated in the hands of the contractor for the care of the Alaskan insane approximately $11,300, the property of patients, for the safeguarding of which a special bond is given by the contractor; a considerable portion of this money, approximately $3,995, belongs to the estates of deceased patients, patients who have been discharged, or who have eloped, and whose present whereabouts is unknown.

It is desirable that some provision be made by Congress for the disposition of such moneys so that the contractor and the department may be relieved of responsibility therefor.

A tentative bill has been framed and a copy is herewith inclosed, providing for the disposition of moneys of legally adjudged insane of Alaska who have been cared for by the Secretary of the Interior. This bill has been drawn along the lines of existing law, the act of June 30, 1906 (34 Stat. 730), relating to St. Elizabeths Hospital, which, in the administration of the affairs of that hospital, has been found to be very effective. I commend the same to your favorable consideration.

Very truly yours,

HUBERT WORK.

SAMUEL T. HUBBARD, JR.

The bill (H. R. 2987) for the relief of Samuel T. Hubbard, jr., was considered as in Committee of the Whole, and was read as follows:

Be it enacted, etc., That in the administration of any laws conferring rights, privileges, and benefits upon honorably discharged soldiers, Samuel T. Hubbard, jr., Signal Corps, Officers' Reserve Corps, shall hereafter be held and considered to have been commissioned as

a captain in the American Expeditionary Forces on May 27, 1917: *Provided*, That no pay, pension, or allowance shall be held to have accrued prior to the passage of this act.

Mr. KING. Mr. President, will the Senator from New York explain that bill?

Mr. WADSWORTH. Mr. President, this bill involves no expense to the Government and has no effect upon any existing situation in the Army.

This gentleman, Mr. Samuel T. Hubbard, jr., was encouraged at the outbreak of the war to apply for a commission. His services were needed in the Signal Corps—services of a very special character. He made the application, met all the requirements upon the examination, executed a letter of acceptance and an oath of office, all on May 24, 1917, and the papers were mailed to the Chief Signal Officer of the Army here at Washington. A sudden order was issued to him to accompany General Pershing's advance party to France; and Mr. Hubbard, obeying that order, regarding himself, as he was regarded by others, in effect an officer of the Army, accompanied General Pershing's party overseas at the very outset of the war. The issuance of the actual commission here at Washington, however, was greatly delayed on account of the jam that was existent at that time in the War Department, so the commission itself did not reach him until June 18, 1917.

This bill is merely for the purpose of changing the date of Mr. Hubbard's commission as an emergency officer in the Army. He is no longer in the Army. He merely wants it known on his record that he was in effect a commissioned officer of the United States Army when he accompanied General Pershing abroad. The bill does not provide for any back pay or pension or allowance, nor does it make him eligible for pension.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

JAMES E. SIMPSON

The bill (S. 2215) for the relief of James E. Simpson was considered as in Committee of the Whole, and was read as follows:

Be it enacted, etc., That the Postmaster General be, and he is hereby, authorized and directed to credit the accounts of James E. Simpson, late postmaster at Collinsville, Ill., in the sum of $13,190.09 due the United States on account of the loss of postal funds resulting from burglary December 18, 1920.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

JOHN P. GRAY

The bill (S. 1897) to reinstate John P. Gray as a lieutenant commander in the United States Coast Guard was announced as next in order.

Mr. KING. Let that be explained.

Mr. JONES of Washington. Mr. President, if the Senator will withhold his objection a moment until I can read a little from the report, I am sure it will demonstrate to him that this bill should pass.

The report says, quoting a letter from the Secretary of the Treasury:

Mr. Gray resigned his commission as a lieutenant commander in the United States Coast Guard under honorable conditions on March 23, 1925. He is a graduate of the Coast Guard Academy and was commissioned as an ensign on May 24, 1909, serving continuously in the service up to the time of his resignation with fidelity, ability, and honor.

The bill proposes his reinstatement as a lieutenant commander on the active list of the Coast Guard to take rank next after Lieut. Commander Warner K. Thompson, and that he be an additional number in that grade and in any grade to which he may hereafter be promoted. If the bill be enacted and Mr. Gray be reappointed a lieutenant commander, his order of precedence in that grade will be the same as it was at the time of his resignation, and in view of being an additional number his reinstatement would not prejudice the standing or rights of officers junior to him.

At the present time the Coast Guard is in need of officers possessing the high qualifications and service experience of Mr. Gray, and as he has been separated from the service less than a year his services could be immediately utilized in responsible and important assignments. The department, therefore, recommends the enactment of the proposed legislation.

Mr. KING. Let me ask the Senator if he thinks it is a wise precedent after men resign from the Army or the Coast Guard to reinstate them?

Mr. JONES of Washington. I think under the circumstances this was a wise course to take. The personnel of the Coast Guard is being enlarged very greatly, and I think we should welcome an opportunity to get men of experience and training.

Mr. SMOOT. What happened to change this man's opinion?

Mr. JONES of Washington. I do not know what happened to change his opinion.

Mr. KING. I object, and ask to have the bill go over.

The PRESIDING OFFICER. The bill will be passed over under objection.

BILLS PASSED OVER

The bill (S. 1747) for the relief of the estate of Henry T. Wilcox was announced as next in order.

Mr. KING. Let that go over.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 3321) to increase the efficiency of the Air Service of the United States Army was announced as next in order.

Mr. WADSWORTH. Let that go over.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 2306) to provide for the prompt disposition of disputes between carriers and their employees, and for other purposes, was announced as next in order.

SEVERAL SENATORS. Let that go over.

The PRESIDING OFFICER. The bill will be passed over.

HANNAH PARKER

The bill (H. R. 3624) for the relief of Hannah Parker was announced as next in order.

Mr. KING. Let that go over.

Mr. PHIPPS. Mr. President, will the Senator kindly withhold the objection for a moment? I think this is a very meritorious bill. It does not involve very much.

Mr. KING. Is this a case of desertion?

Mr. PHIPPS. It was a case of alleged desertion. It is explained in the report, however, and the bill has had the approval of the committee.

Mr. SMOOT. Can the Senator explain why the soldier deserted, or whether he did desert?

Mr. PHIPPS. I will request that the Secretary read the report.

The PRESIDING OFFICER. Does the Senator withdraw the objection?

Mr. KING. I notice on page 2 the following language:

Application for removal of the charge of desertion and for an honorable discharge in the case of this soldier has been denied by this department, and now stands denied, on the ground that he did not serve until May 1, 1865—

And so forth. It would seem as though there was a desertion, and the department has denied the application for a return of this man's name to the rolls. I think the Senator had better let the bill go over.

Mr. PHIPPS. I will consent to its going over.

The PRESIDING OFFICER. The bill will be passed over.

BILLS PASSED OVER

The bill (H. R. 7906) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, etc., and certain soldiers and sailors of wars other than the Civil War, and to widows of such soldiers and sailors, was announced as next in order.

Mr. KING. Let that go over.

The PRESIDING OFFICER. The bill will be passed over.

COLORADO RIVER BRIDGE NEAR LEE FERRY, ARIZ.

The bill (S. 3282) to amend the act of February 26, 1925 (ch. 343, Stat. 68th Cong.), authorizing the construction of a bridge across the Colorado River near Lee Ferry, Ariz., was announced as next in order.

Mr. KING. Let us have an explanation of this bill by the Senator from Arizona.

Mr. ASHURST. Mr. President, Senators will not forget that when the deficiency bill was before the Senate there was in the bill an appropriation, theretofore authorized, in the sum of $100,000 to pay one-half the cost of a bridge across the Colorado River 2 miles below Lee Ferry, and it was to be reimbursable from the funds of the Navajo Indians. So many Senators objected to the item, and so many Senators, including the esteemed junior Senator from Utah [Mr. KING], urged me to introduce a bill repealing the reimbursable feature and making it a gratuity out of the Treasury, that I really felt that I was carrying out the view of the Senate. In fact, no less than a dozen Senators on the floor of the Senate urged the introduction of such a bill. I feel that the bill was introduced by me at the special instance and request of Senators who said they had no objection to a gratuity appropriation, but they did object to an appropriation from the funds of the Navajo Indians.

The deficiency bill has passed and is now a law. The $100,000 is chargeable to the funds of the Navajo Indians. This is a proposal to repeal the reimbursable feature, so that if this bill becomes a law the $100,000 will be a gratuity out of the Treasury and will not be reimbursable from the funds of the Indians.

SEVERAL SENATORS. Let the bill go over.

The PRESIDING OFFICER. The bill will be passed over.

Mr. JONES of Washington. Mr. President, I desire to ask the Senator a question. In section 2 the bill reads:

> No part of the sum authorized to be appropriated under this act, or which may have been appropriated under *the said act* which is hereby amended, shall in any way become a charge reimbursable to the United States from the funds of the Navajo Indians or from any other tribe of Indians.

I can not find any reference to any other act in the bill. I think I understand what was intended, but the bill does not express it. There is no reference to any other act.

Mr. ROBINSON of Arkansas. Mr. President, I understand that the bill has gone over.

The PRESIDING OFFICER. The bill has gone over.

Mr. JONES of Washington. I simply wanted to call the Senator's attention to that fact.

Mr. ASHURST. Yes; I thank the Senator.

ARTILLERY RANGE AT FORT ETHAN ALLEN, VT.

The bill (S. 2752) for the purchase of land as an artillery range at Fort Ethan Allen, Vt., was considered as in Committee of the Whole.

The bill had been reported from the Committee on Military Affairs with amendments, on page 1, line 4, after the word "donation," to insert "a tract of," and in line 5, after the word "land," to insert "containing approximately 6,007 acres," so as to make the bill read:

> *Be it enacted, etc.*, That the Secretary of War is hereby authorized and empowered to acquire, by purchase, condemnation, or donation, a tract of land containing approximately 6,007 acres in the vicinity of and for use as a target range in connection with Fort Ethan Allen, Vt., and there is hereby authorized to be appropriated for such purpose a sum not to exceed $200,000 out of any money in the Treasury not otherwise appropriated.

The amendments were agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

SAN JUAN RIVER BRIDGE NEAR BLOOMFIELD, N. MEX.

The bill (S. 3296) to amend an act approved January 30, 1925 (ch. 117, Stat. 68th Cong.), authorizing the payment of one-half the cost of the construction of a bridge across the San Juan River near Bloomfield, N. Mex., was considered as in Committee of the Whole, and was read as follows:

> *Be it enacted, etc.*, That the act approved January 30, 1925 (chapter 117 of the Statutes of the Sixty-eighth Congress), entitled "An act to provide for the payment of one-half the cost of the construction of a bridge across the San Juan River, N. Mex.," be, and it hereby is, amended to read as follows:
>
> "SECTION 1. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $6,620, or so much thereof as may be necessary, to defray one-half the cost of a bridge across the San Juan River near Bloomfield, N. Mex., under rules and regulations to be prescribed by the Secretary of the Interior, who shall also approve the plans and specifications for said bridge: *Provided*, That the State of New Mexico or the county of San Juan shall contribute the remainder of the cost of said bridge, the obligation of the Government hereunder to be limited to the above sum but in no event to exceed one-half the cost of the bridge.
>
> "SEC. 2. No part of the sum authorized to be appropriated under this act, or which may have been appropriated under the said act which is hereby amended, shall in any way become a charge reimbursable to the United States from the funds of the Navajo Indians or from any other tribe of Indians."

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

BILL PASSED OVER

The bill (H. R. 8184) to authorize the Secretary of the Interior to purchase certain land in California to be added to the Cahuilla Indian Reservation and authorizing an appropriation of funds therefor was announced as next in order.

Mr. KING. Mr. President, will the chairman of the committee explain the necessity for that? Usually the western States are complaining about the invasion of the Federal Government, and its assertion of jurisdiction over lands which ought to belong to the States. Here we are seeking to obtain them from one of the States.

Mr. HARRELD. Mr. President,——

Mr. SMOOT. Let the bill go over.

The PRESIDING OFFICER. The bill will be passed over.

CAMP GROUND FOR INDIAN SCHOOL, PHOENIX, ARIZ.

The bill (H. R. 8652) to provide for the withdrawal of certain lands as a camp ground for the pupils of the Indian school at Phoenix, Ariz., was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

BILL PASSED OVER

The bill (H. R. 186) authorizing the payment of tuition of Crow Indian children attending Montana State public schools was announced as next in order.

Mr. KING. Mr. President, I should like to ask the Senator whether that money is to be paid out of the tribal funds, or is it a direct appropriation out of the Treasury?

Mr. HARRELD. I shall have to look at the report and see.

Mr. McLEAN. Let the bill go over.

The PRESIDING OFFICER. The bill will be passed over.

LANDS IN NEVADA

The bill (H. R. 8590) granting certain lands to the city of Sparks, Nev., for a dumping ground for garbage, and other like purposes, was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

EXTENSION OF NATIONAL BANK ACT TO VIRGIN ISLANDS

The bill (S. 2769) to extend the provisions of the national bank act to the Virgin Islands of the United States was announced as next in order.

Mr. ROBINSON of Arkansas. Mr. President, I think there ought to be an explanation of this bill.

Mr. McLEAN. Mr. President, I assumed that of course every Senator had read the full report on this bill——

Mr. ROBINSON of Arkansas. That is a very violent assumption.

Mr. McLEAN. But I shall be very glad to explain it to the Senators.

The sole purpose of the bill is to permit the only bank in the Virgin Islands to reorganize, and become a national bank. The Senator will see that several sections of the Federal statutes are referred to.

Mr. SMOOT. These banks are owned by——

Mr. McLEAN. There is only one bank in the islands.

Mr. SMOOT. That is owned by four Danish banks.

Mr. McLEAN. That is true, and under our law the directors of Federal national banks must be citizens of the United States. Consequently, we have to qualify these Danes in order that they may act in the reorganization of the bank, if that be desired, or they may transfer the bank to other parties who may reorganize it as a national bank.

Mr. ROBINSON of Arkansas. I observe that there are some amendments, apparently one very important amendment.

Mr. McLEAN. I will explain them if the Senator will permit me. I will proceed seriatim with the amendments, and it will take but a moment.

Sections 19 and 20 of the law are referred to. They are the sections under which note issues of banks other than national banks are taxed, and as this bank has authority to issue its own notes, we had to provide in this bill that that privilege might continue until the bank becomes a national bank, when the privilege will cease.

Section 5243 of the Revised Statutes, which is referred to in line 6, prohibits the use of the word "national" by other than national banks. There is a proviso, the Senator will observe, which protects the bank in any treaty right which it may now have under our treaty as to the islands.

The last proviso, which is rather long—but I think the Senator will see that it is an appropriate provision—brings the islands within the jurisdiction of the Federal district court in the island of Porto Rico. I will say to the Senator that this bill has been approved by the Federal Reserve Board, by the Secretary of the Treasury, and by the Department of Justice.

Mr. SMOOT. Let me ask one question. I notice the report states that—

> This bank is owned by four Danish banks and was organized under the concession granted by the minister of finances of the Government of Denmark June 20, 1904, and under this concession this bank was

granted the exclusive rights to issue bank notes, exchangeable with gold, for a period of 30 years. It is the purpose of this bill to enable the owners and directors of this bank to reorganize it as a national bank or convey it to others who will reorganize it and maintain it as a national bank.

Are we to understand that this bank is to be sold by the owners of the four Danish banks to some American citizen who is to run the bank as a national bank?

Mr. McLEAN. I can not answer that question certainly. It is the hope that the bank will be transferred to parties who will reorganize it as a national bank, but if that is not done, we want to extend to the present ownership that right.

Mr. SMOOT. I think the transfer ought to be mandatory, not permissive.

Mr. WILLIS. How could it be mandatory, under the treaty?

Mr. SMOOT. It should be mandatory, or we should not recognize it as a part of our national banking system.

Mr. WILLIS. The rights this bank has are rights which it enjoys under the treaty.

Mr. SMOOT. I do not want to interfere at all with the present rights.

Mr. McLEAN. The condition there is very annoying at present. The bank has the right to issue Danish franc notes. Only about one-fifth of the currency in the islands is American currency at present, and the inhabitants are very anxious to have American currency used entirely, which will soon result if this bank is reorganized and becomes a national bank. They will stop issuing these Danish franc notes, and will then have the privilege of issuing their notes under our Federal reserve system. The Secretary of the Treasury and the Federal Reserve Board are anxious that this privilege should exist there. The islands belong to the United States, and there is no reason why the situation should not be cleared up just as soon as it possibly can be.

Mr. SMOOT. I am in full sympathy with the legislation, but I doubt the wisdom of having the owners of four Danish banks organize a bank in the Virgin Islands, or anywhere else, and have it issuing American money.

Mr. McLEAN. The islands belong to the United States.

Mr. SMOOT. I am perfectly aware of that.

Mr. McLEAN. These men are under the jurisdiction of the United States.

Mr. SMOOT. Yes; but Danish citizens are not citizens of the United States.

Mr. McLEAN. They can be if they so choose, under the treaty, and they probably will be, if we grant them this privilege.

Mr. SMOOT. I hope so.

Mr. ROBINSON of Arkansas. It is observed that one of the amendments safeguards the rights of the National Bank of the Danish West Indies guaranteed by the treaty with Denmark signed on August 4, 1916. What rights were guaranteed to the bank?

Mr. McLEAN. I assume that the principal guaranty is the privilege of continuing the issuance of these Danish bank notes. They had a 30-year privilege, which has not expired as yet. I assume that is the principal object. The chairman of the Committee on Insular Possessions may know more about it than I do, but in a long letter which I had from the Secretary of the Treasury that is stated as the principal reason.

Mr. ROBINSON of Arkansas. Is it proposed to create a national bank of the United States, with authority to issue the notes of a foreign country?

Mr. McLEAN. If they reorganize and become a national bank, they will, of course, stop that and issue our Federal reserve notes.

Mr. ROBINSON of Arkansas. But it is expressly provided in this bill that the rights guaranteed to the Danish West Indies Bank shall not be impaired by the bill; that is to say, if the bank is given the right to issue Danish notes this act will in no way impair that right.

Mr. McLEAN. A representative from the Secretary of State was anxious that that proviso should be inserted, because there might be some other rights, he felt, which would make it wise to do so, so that there need not be any question about our violating any of the provisions of the treaty. The committee thought no harm could result from inserting the proviso in the bill.

Mr. ROBINSON of Arkansas. What I would like to know is this: If this bill shall pass and the bank shall be chartered as a national bank, can it and will it continue to issue the notes of a foreign country?

Mr. McLEAN. Of course, when they come under the jurisdiction of the United States they will have to surrender that right.

Mr. ROBINSON of Arkansas. It is expressly provided in this bill, if the Senator pleases, that not only shall they not be required to surrender that right but that the right shall be preserved to them.

Mr. McLEAN. I think there is no practical force to the Senator's objection.

Mr. ROBINSON of Arkansas. I have not made any objection; I have asked for information. Here is an amendment proposed which plainly guarantees, according to the explanation which the Senator has given, the right to this bank to continue to issue Danish notes, and I merely want to know if it is the object of the bill to charter a national bank of the United States with authority to issue the notes of a foreign country.

The Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported from the Committee on Banking and Currency with amendments.

Mr. WILLIS. Mr. President, if I may just supplement what the Senator from Connecticut has said, the purpose of the legislation is exactly the reverse of that which the Senator from Arkansas has stated.

Mr. ROBINSON of Arkansas. May I ask the Senator a question?

Mr. WILLIS. Certainly.

Mr. ROBINSON of Arkansas. What is the object of inserting an amendment in the bill providing as follows:

Provided further, That no rights of the National Bank of the Danish West Indies guaranteed by the treaty with Denmark signed August 4, 1916, shall be in anywise impaired?

Let me say in explanation of my question that the Senator from Connecticut has explained that the principal right referred to there is a right which the bank now enjoys, to issue certain Danish notes. What is the object of inserting this amendment in the bill, if the intention is to terminate the practice of the bank to issue such notes?

Mr. McLEAN. There might be notes outstanding at the time this bill is passed, and there might be some requirements as to their liquidation, as a result of which the provisions of the treaty, if they want to maintain them, should be extended temporarily. But I suggest to the Senator that they will be very certain to retire them as fast as they can.

Mr. WILLIS. It is the purpose to simplify the system and get rid of this Danish money. The charter of this bank expires, anyway, at a very early date. I want to say to the Senator that the experts of the department went into the matter very carefully. The State Department felt that there ought to be some such amendment as this, so as to alleviate the fears of these Danish owners and give them assurance that their rights were not to be infringed upon. I am certain no evil will flow from the amendment.

The PRESIDING OFFICER. The clerk will state the amendments.

The CHIEF CLERK. On page 2, line 4, to strike out the word "section" and insert in lieu thereof the word "sections"; on line 4, after the numerals "19," to insert the words "and 20"; on line 7, after the word "Indies," to insert the words "nor to its notes"; on line 22, after the word "thousand," to insert a colon and the words "*Provided further*, That no rights of the National Bank of the Danish West Indies guaranteed by the treaty with Denmark signed August 4, 1916, shall be in any wise impaired"; and to add at the end of the bill a new section reading as follows:

SEC. 2. Jurisdiction is hereby conferred on the District Court of the United States for Porto Rico of all cases, civil and criminal, arising in the Virgin Islands of the United States under the national bank act, as amended, and all other acts of Congress relating to national banks, to the same extent as jurisdiction of matters arising under said laws is conferred upon district courts of the United States. The circuit court of appeals for the first circuit shall have appellate jurisdiction of cases arising in the Virgin Islands of the United States under this act and "the national bank act," as amended, and all other acts of Congress relating to national banks prosecuted in the District Court of the United States for Porto Rico, in conformity with the provisions of section 128 of the Judicial Code relating to the review of cases tried by the United States District Court for Porto Rico, as amended.

So as to make the bill read:

Be it enacted, etc., That the national bank act, as amended, and all other acts of Congress relating to national banks, shall in so far as not locally inapplicable hereafter apply to the Virgin Islands of the United States: *Provided*, That such inhabitants of the Virgin Islands of the United States as resided therein and were Danish citizens on January 17, 1917, and who have not since that date elected

to preserve their Danish citizenship in the manner provided for in article 6 of the convention between the United States and Denmark, signed August 4, 1916, shall be regarded as citizens of the United States within the meaning of section 5146 of the Revised Statutes, as amended: *Provided further,* That sections 19 and 20 of the act of February 8, 1875 (18 Stat. L. p. 311), and section 5243 of the Revised Statutes, shall not apply to the National Bank of the Danish West Indies nor to its notes: *Provided further,* That any bank which shall organize under the authority of this act shall not have the right to issue bank notes until after the expiration of the concession granted to the National Bank of the Danish West Indies, or the relinquishment of such concession by said bank: *Provided further,* That any bank which shall organize under the authority of this act may with the approval of the Comptroller of the Currency establish or acquire and keep in operation not more than two branches in the Virgin Islands of the United States: *Provided further,* That said bank and its branches shall have the right to act as broker or agent for others as granted by the act of September 7, 1916 (39 Stat. L. p. 752), notwithstanding that the population of the place in which it is located may exceed 5,000: *Provided further,* That no rights of the National Bank of the Danish West Indies guaranteed by the treaty with Denmark, signed August 4, 1916, shall be in any wise impaired.

SEC. 2. Jurisdiction is hereby conferred on the District Court of the United States for Porto Rico of all cases, civil and criminal, arising in the Virgin Islands of the United States under the national bank act, as amended, and all other acts of Congress relating to national banks, to the same extent as jurisdiction of matters arising under said laws is conferred upon district courts of the United States. The circuit court of appeals for the first circuit shall have appellate jurisdiction of cases arising in the Virgin Islands of the United States under this act and "the national bank act," as amended, and all other acts of Congress relating to national banks prosecuted in the District Court of the United States for Porto Rico, in conformity with the provisions of section 128 of the Judicial Code relating to the review of cases tried by the United States District Court for Porto Rico, as amended.

The amendments were agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to extend the provisions of the national bank act to the Virgin Islands of the United States, and for other purposes."

FEDERAL RESERVE BANK BUILDING AT BUFFALO, N. Y.

The joint resolution (S. J. Res. 44) authorizing the Federal Reserve Bank of New York to invest its funds in the purchase of a site and the building now standing thereon for its branch office at Buffalo, N. Y., was considered as in Committee of the Whole, and was read, as follows:

Resolved, etc., That the Federal Reserve Bank of New York is hereby authorized to invest in the purchase of land improved by a bank building, already fully constructed, for its branch office at Buffalo, N. Y., a sum not to exceed $600,000, out of its paid-in capital stock and surplus.

Mr. COUZENS. I would like to ask the chairman of the committee if the amendment provided in the joint resolution authorizing the building of a bank at Detroit should not be in this joint resolution? There is no such amendment in it.

Mr. GLASS. There is a separate bill on the calendar for the building at Detroit.

Mr. COUZENS. Yes; but I was referring to the fact that when that bill was reported it was reported with an amendment providing that the bank should pass upon the plans and the expenditures for equipment, and that amendment, which was requested by the Federal Reserve Board here, does not seem to have been required in the case of this bill.

Mr. McLEAN. I will say to the Senator from Michigan that both of these bills were submitted to the Federal Reserve Board, and the board made a careful examination of the Buffalo situation—such a careful examination that they thought the amendment which was suggested in connection with the bill for Detroit was unnecessary in this case. I do not know that there is any special objection to that amendment being attached to this bill, but it does not seem to me to be necessary.

Mr. COUZENS. I do not understand why they segregated Detroit for that particular amendment and did not provide for it in the Buffalo case.

Mr. McLEAN. The New York Federal Reserve Bank has an option on a building in Buffalo which meets their requirements. They consider it an excellent bargain.

Mr. GLASS. It is already equipped.

Mr. McLEAN. I think they have already been offered a handsome premium on their option. The building is already equipped, and for that reason it was not thought that this amendment was necessary.

The joint resolution was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

FEDERAL RESERVE BANK BUILDING AT DETROIT, MICH.

Mr. COUZENS. Mr. President, while we are on this subject, for the purpose of expediting the erection of these bank buildings I ask unanimous consent that the Senate proceed to the consideration of Senate Joint Resolution 61, authorizing the Federal Reserve Bank of Chicago to enter into contracts for the erection of a building for its branch establishment in the city of Detroit, Mich., so that the erection of the building may be expedited at this season of the year.

The PRESIDING OFFICER. The Chair will state that the hour of 3 o'clock having arrived the unanimous-consent agreement goes into effect.

Mr. COUZENS. I ask unanimous consent for the present consideration of Senate Joint Resolution 61, Order of Business No. 280.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution (S. J. Res. 61) authorizing the Federal Reserve Bank of Chicago to enter into contracts for the erection of a building for its branch establishment in the city of Detroit, Mich., which had been reported from the Committee on Banking and Currency, with an amendment on page 2, line 9, after the numerals "$600,000," to insert a colon and the following proviso:

Provided, however, That the character and type of building to be erected, the amount actually to be expended in the construction of said building, and the amount actually to be expended for the vaults, permanent equipment, furnishings, and fixtures for said building shall be subject to the approval of the Federal Reserve Board.

So as to make the joint resolution read:

Whereas the building in the city of Detroit now occupied under lease by the Detroit branch of the Federal Reserve Bank of Chicago is inadequate for the business of that institution, which is being conducted in three separate locations, so that the larger portion of its moneys and valuables must be kept in vaults other than its own, and this entails the serious hazard in transferring large sums of moneys through the streets, inconvenience to member banks, and large increases in overhead; and

Whereas the Federal Reserve Bank of Chicago had purchased before the 3d day of June, 1922, and now owns a lot situated at the northeast corner of Fort and Shelby Streets in the city of Detroit, Mich., suitable for the erection of a banking office adequate for the needs of said Detroit branch but had not begun the erection of a building thereon; and

Whereas the cost of construction of a suitable building as estimated from plans, caused to be prepared by the directors of the Federal Reserve Bank of Chicago, will not exceed $600,000: Therefore be it

Resolved, etc., That the Federal Reserve Bank of Chicago be, and it is hereby, authorized to enter into contracts for the erection of a building for its Detroit branch on the site now owned, provided the total amount expended in the erection of said building, exclusive of the costs of the vaults, permanent equipment, furnishings, and fixtures, shall not exceed the sum of $600,000: *Provided, however,* That the character and type of building to be erected, the amount actually to be expended in the construction of said building, and the amount actually to be expended for the vaults, permanent equipment, furnishings, and fixtures for said building shall be subject to the approval of the Federal Reserve Board.

The amendment was agreed to.

The joint resolution was reported to the Senate as amended and the amendment was concurred in.

The joint resolution was ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

LONG-AND-SHORT-HAUL CLAUSE OF INTERSTATE COMMERCE ACT

The PRESIDING OFFICER. The Chair lays before the Senate the unfinished business, which will be stated.

The CHIEF CLERK. A bill (S. 575) to amend section 4 of the interstate commerce act.

Mr. FESS. Mr. President, I hold in my hand the report of the Interstate Commerce Commission on its findings upon the application of the railroads for authority to establish reduced rates on certain commodities from eastern defined territories, Groups D to J, inclusive, to Pacific coast terminals, without

observing the long-and-short-haul provision of section 4 of the interstate commerce act.

The application was denied. I ask unanimous consent to insert this report in the RECORD at this point.

There being no objection, the matter referred to was ordered to be printed in the RECORD, as follows:

INTERSTATE COMMERCE COMMISSION

(Fourth Section Application No. 12436)

REDUCED RATES ON COMMODITIES FROM ORIGINATING TERRITORY WEST OF INDIANA STATE LINE TO PACIFIC COAST TERMINALS

(Submitted October 16, 1924. Decided March 1, 1926)

Application for authority to establish reduced rates on certain commodities from eastern defined territories, Groups D to J, inclusive, to Pacific coast terminals, without observing the long-and-short-haul provision of section 4 of the interstate commerce act, denied.

H. A. Scandrett, F. H. Wood, J. N. Davis, R. J. Hagman, James L. Coleman, J. S. Moore, jr., B. W. Scandrett, E. W. Camp, and J. E. Lyons, for applicants.

W. S. McCarthy for Intermediate Rate Association; H. W. Prickett for Intermediate Rate Association and Chamber of Commerce and Commercial Club of Salt Lake City; C. O. Bergan for Intermediate Rate Association, Spokane Merchants Association, and Spokane Chamber of Commerce; J. P. Haynes and Robert Hula for Chicago Association of Commerce and various organizations and companies; A. F. Vandergrift for Louisville Board of Trade; L. G. Macomber for Ohio State Industrial Traffic League and Toledo Chamber of Commerce; C. F. Rowe for Duluth Chamber of Commerce and Marshall Wells Co.; Lewis B. Boswell for Quincy Freight Bureau; Lee Kuempel and L. A. Knudsen for Minneapolis Traffic Association and B. F. Nelson Manufacturing Co.; Herman Mueller for St. Paul Association of Public & Business Affairs; Fred P. Zimmerman for Western Cartridge Co.; L. W. Moore for Maytag Co. and Illinois Electric Porcelain Co.; and J. E. Bryan for Wisconsin Traffic Association.

Harry Dickenson for Denver Transportation Bureau; O. C. Garlington for Missoula Mercantile Co.: Kalispell Mercantile Co., and Missoula Chamber of Commerce; O. A. Johannsen for Idaho Freight Rate Reduction Association; Sherman M. Coffin for Traffic Bureau, Boise Chamber of Commerce, and Northrop Hardware Co.; George B. Graff for Boise Chamber of Commerce and Intermediate Rate Association; J. A. Taylor for Chamber of Commerce of Idaho Falls; George W. Padgham for Gooding Chamber of Commerce; A. W. McNeil for committee of Nampa Kiwanis Club; Joseph N. Teal and William C. McCulloch for West Coast Lumbermen's Association, Portland Traffic & Transportation Association, and Portland Chamber of Commerce; H. L. Pelan for Potlatch Lumber Co., Craig Mountain Lumber Co., and Shevlin-Hixon Lumber Co.

E. W. Walker for Reno Chamber of Commerce; Frank M. Hill for Fresno Traffic Association and Bakersfield Civic Commercial Association; Homer C. Katze for Bakersfield Civic Commercial Association; Lewis H. Smith for Exchange Club of Fresno; B. B. Price for Kings County Chamber of Commerce; A. R. Linn for Hanford Board of Trade; H. K. Morgan for Reedley Chamber of Commerce; R. J. Schelme for Kingsbury Chamber of Commerce; J. S. Boynton for Clovis Chamber of Commerce; C. O. Griffin for Lindsay Chamber of Commerce; George T. McCabe for Modesto Chamber of Commerce and San Joaquin Valley Commercial Secretaries Association; Roland Johnston for Traffic Bureau, Phoenix Chamber of Commerce; Jones, Blaine & Jones for Graham & Gila Counties Traffic Association, Apache Powder Co., Benson Improvement Club, Arizona Cattle Growers Association, and Arizona Packing Co.; F. C. Tockle for El Paso Freight Bureau; D. B. Wiley for Salt River Valley Water Users' Association.

C. E. Lombardi and Baker, Botts, Parker & Garwood for Longview, Portland & Northern Railway Co.; S. J. Wettrick and L. S. McIntyre for Seattle Chamber of Commerce; Jay W. McCune for Traffic Bureau, Tacoma Chamber of Commerce; Walter E. Meacham for Baker County Chamber of Commerce; Earl C. Reynolds for Union County Chamber of Commerce; C. C. Fydell for Brooks-Scanlon Lumber Co.; George P. Anderson for Swift & Co. and Frye & Co.; A. W. Stone for Apple Growers' Association of Hood River, Oreg.; W. J. Urquhart for Yakima Valley Traffic & Credit Association; John S. Kloeber for Yakima Valley Growers' Association; Ralph L. Sheperd for Oregon City Chamber of Commerce and Hawley Pulp & Paper Co.; Edward M. Cousin for Associated Industries of Oregon; R. D. Lytle for North Pacific Millers' Association; L. B. Stoddard for Oregon Lumber Co.; Seth Mann for San Francisco Chamber of Commerce; E. W. Hollingsworth, R. T. Boyd, and Bishop & Bahler for Oakland Chamber of Commerce; G. J. Bradley for Sacramento Merchants & Manufacturers Association; J. C. Sommers and H. E. Threyfall for Stockton Chamber of Commerce; H. M. Remington for California Growers & Shippers Protective League; John J. Seid for Crown Willamette Paper Co.; Fred Farrar for Colorado Fuel & Iron Co.; A. R. Moylan for Paraffine Cos. (Inc.).

Charles McVeagh and Charles S. Belsterling for Illinois Steel Co., American Steel & Wire Co., American Bridge Co., Tennessee Coal & Iron Co., National Tube Co., Carnegie Steel Co., Loraine Steele Co., and American Steel & Tin Plate Co.; J. D. Hefferman for Scoville Manufacturing Co.; Arthur N. Payne for Associated Industries of Massachusetts; F. A. Parker for Columbia Mills (Inc.); William H. Chandler for Boston Chamber of Commerce and New England Traffic League; C. L. Whittemore for New England Paper & Pulp Association; Carl Giessow and Edgar Moulton for New Orleans Joint Traffic Bureau; Jesse F. Atwater for American Hardware Corporation and Manufacturers Association of Connecicut; H. N. Holdren for American Institute of Steel Construction and Wyckoff Drawn Steel Co.; W. J. Hammond for Inland Steel Co.; F. J. Monaghan for Remington Arms Co. (Inc.); F. W. Burton for Rochester Chamber of Commerce; J. G. Page for Kansas City Structural Steel Co.; George F. Hichborn and Charles A. Skeen for United States Rubber Co.; J. H. Tedrow for Chamber of Commerce of Kansas City, Mo.; W. W. Meyer, G. M. Wood, J. R. MacAnanny, and J. D. Brady for New York, New Haven & Hartford Railroad Co. and Boston & Maine Railroad; C. J. Fagg for Chamber of Commerce of Newark; Emil A. Gallman for Paterson Chamber of Commerce; George C. Lucas for National Publishers Association; M. S. Cummings for New Jersey Industrial Traffic League; Louis Isakson for Winchester Repeating Arms Co.; W. H. Pease for Bridgeport Brass Co.; Frank E. Williamson for Buffalo Chamber of Commerce and Larkin Co.; J. D. Greene for Stevens & Thompson Paper Co.; William E. Connell for Merchants Association of New York; Frank S. Grace for Brooklyn Chamber of Commerce; W. F. Price for J. B. Williams Co.

J. E. Shaughnessy for Public Service Commission of Nevada; Claude L. Draper for Public Service Commission of Wyoming; Thomas A. McKay for Public Utilities Commission of Utah; E. G. Toomey and Lee Dennis for Board of Railroad Commissioners of Montana; J. M. Thompson and Samuel L. Newton for Public Utilities Commission of Idaho; Raymond W. Clifford for Department of Public Works, State of Washington; Amos A. Betts and E. W. McFarland for Arizona Corporation Commission; William P. Ellis for Public Service Commission of Oregon; Frank M. Watson for Minnesota Railroad and Warehouse Commission; Hugh H. Williams for New Mexico State Corporation Commission; John E. Benton for Arizona Corporation Commission, Public Utilities Comimssion of Idaho; Board of Railroad Commissioners of Montana, Public Service Commission of Nevada, New Mexico State Corporation Commission, Public Utilities Commission of Utah, and Public Service Commission of Wyoming.

Frank Lyon for Luckenbach Steamship Co., United American Lines, Williams Steamship Co., Argonaut Steamship Co., North Atlantic & Western Steamship Co., and Dollar Steamship Co.; Horace M. Gray for United States Shipping Board.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This is an application under the fourth section of the interstate commerce act filed by western transcontinental carriers for authority to establish reduced rates on certain commodities from points in eastern defined territories, Groups D to J, inclusive, to Pacific coast terminals lower than are observed at intermediate destinations. The principal commodities are iron and steel articles, paper and paper articles, ammunition, cotton piece goods, lard substitutes, paint, roofing, rosin, soap, and soda. The origin territory extends from Chicago, Ill., on the east, to Denver, Colo., on the west, and includes also some Group C points east of Chicago on the Chicago, Milwaukee & St. Paul. Group D, embracing Chicago territory, is the most important origin group. The destinations are ports served by steamship lines operating between the Atlantic and Pacific coasts through the Panama Canal. It is proposed to reduce the rates to the Pacific coast ports in order to place the manufacturers of the Middle West more nearly upon a rate equality with their eastern competitors, who by reason of their location on or near the Atlantic seaboard enjoy the advantage of cheaper water transportation. The applicants hope that by stimulating traffic through the proposed reductions they may be able to increase their net revenues, but they do not propose to apply the reduced rates to intermediate destinations, since to do so would more than offset the gain from increased traffic to the ports.

Hearings were held at Chicago, Ill.; Sale Lake City, Utah; Butte, Mont.; Boise, Idaho; Spokane, Wash.; Portland, Oreg.; Reno, Nev.; San Francisco and Fresno, Calif.; Phoenix, Ariz.; and New York, N. Y. Exceptions were filed by applicants and various other parties to the report proposed by the examiner and the case was orally argued before us. Unless otherwise specified, rates are stated in amounts per 100 pounds or tons of 2,000 pounds. The present and proposed rates from Group D, which are generally blanketed from all points in the origin territory, and the port-to-port rates of the water lines are set out in the appendix to this report.

The application differs from that of 1921 which was considered and denied in Transcontinental cases of 1922 (74 I. C. C. 48), in that the commodities are not as numerous and the territory of origin is confined to points directly served by the western carriers. The eastern carriers joined in the former application, but do not join in this. It is claimed that the reductions proposed are necessary if the western rail carriers are to transport to the Pacific coast

in any volume articles produced or manufactured in the Middle West which are also produced on or near the Atlantic seaboard and move therefrom through the Panama Canal at rates substantially lower than the present all-rail rates from the origin territory covered by this application.

The history of the transcontinental rate adjustment with relation to the fourth section of the act was reviewed briefly in the report in Transcontinental cases of 1922, supra, referred to herein as the former report. Generally speaking, prior to March 15, 1918, rates to the Pacific coast terminals were lower than to intermediate points. On that date the rates in effect to intermediate territory on the commodities embraced in this application were extended to the terminals, in conformity with the decisions in Reopening Fourth Section Applications (40 I. C. C. 35) and Transcontinental Rates (46 I. C. C. 236) denying fourth-section relief. These rates were increased under the general increases of 1918 and 1920 and were decreased under the reduction of 1922. Thereafter, when the application filed in 1921 was denied, the lower rates then proposed on most of the items here under consideration were published by the western carriers to the terminals from the origin territory covered by the present application and were observed as maxima at intermediate points. On certain of the articles rates slightly higher than the proposed terminal rates were published and blanketed back into the interior. As the result of these adjustments the maximum rates to intermediate territory, except on dry goods and cotton piece goods, are now lower than they would have been if held to the two general increases and one general reduction.

Transcontinental Rates, supra, was decided in June, 1917, when water competition through the Panama Canal was of minor importance, due to the withdrawal of vessels for use in the trans-Atlantic service. When the application of 1921 was heard, service by water through the canal had been resumed. At the time of the hearing in the present case the intercoastal movement was greater than at any previous time in the history of the canal. This has created such a change in conditions that the western carriers feel justified in renewing their application and in proposing rates that are lower than those formerly proposed.

Certain of the items included in the application of 1921 have now been withdrawn, as investigation has indicated a relatively light movement by water. These are phosphate of ammonia boiler-cleaning compounds, pole-line construction material, sulphate of magnesium, lard, rice and rice products, and tinware. As a rule the rates now proposed on iron and steel articles are from 5 to 10 cents higher than those originally proposed in this proceeding.

While the natural growth of population in the West has been reflected in an increase in the total traffic of the western transcontinental lines, the all-rail movement to the Pacific coast of many important commodities which they handle has declined. This is illustrated by the relative movement of iron and steel articles. During the months of June, July, and August, 1920, 42,004 tons of the iron and steel articles listed in the application moved from Group D to the terminals and to Los Angeles. During the same months of 1923 only 14,496 tons moved. The movement of these articles by rail from all groups, A to J, inclusive, to the terminals, Los Angeles, and interior California, Oregon, and Washington for the months of June, July, and August, 1921, 1922, and 1923, shows no upward trend, whereas the movement of similar articles through the canal during the same periods increased in a marked degree. From exhibits introduced by the applicants it appears that in 1921 they hauled 83,473 tons westbound and the water lines 91,197 tons. In 1922 the movement by rail was 63,790 and by water 260,949 tons, and in the following year 82,563 and 446,310 tons, respectively. The figures given for the water movement are approximate only, as the classification of vessel cargoes is not as accurately kept as is the case with traffic moving by rail. The United States Shipping Board reports a movement through the canal of iron and steel articles during June, July, and August, 1923, of 386,689 long tons, equivalent to 433,092 net tons.

Increase in water-borne tonnage is further indicated both by the increase in the number of vessels engaged in the trade and by the total tonnage carried. At the time of the former report there were 13 steamship lines operating 77 steamships between the Atlantic or Gulf and Pacific coasts. At the present time there are 16 lines operating 146 steamships. In 1921 the total westbound tonnage of intercoastal traffic amounted, according to the Panama Canal record, to 893,396 long tons. The movement in 1923, as reported by the division of statistics, bureau of research, United States Shipping Board, was 2,764,029 long tons, an increase over 1921 of 1,870,633, or 209 per cent.

The rail carriers recognize that transportation by water is so much cheaper than by rail that they can not hope to divert to their lines much, if any, traffic which may originate at the Atlantic or Gulf ports or close thereto.

Most of the production, however, is inland, and they anticipate that by reducing their rates from Chicago and related territory so as more nearly to equal the combination of the rail-and-water rates from the principal eastern originating points, more tonnage will move over their lines, thus increasing their net revenues. The bulk of the westbound movement through the canal consists of iron and steel articles, and the principal points of production are in the Pittsburgh district. Most of the iron and steel articles listed in the application move from Pittsburgh to Baltimore, the nearest port, at a rate of 31 cents. The rate on these articles from Baltimore to the Pacific coast ports by water is 40 cents, producing a combination rate from Pittsburgh of 71 cents. To this sum must be added the incidental charges for water service which are not incurred when the movement is all rail. These incidental charges cover wharfage, handling, and insurance, and aggregate about 5.5 or 6.5 cents additional, varying slightly at the different ports. The rail carriers have, therefore, a total charge of about 76.5 or 77.5 cents to meet to place their rates from Chicago on an equality with the rail-and-water rates available to the manufacturer at Pittsburgh. Iron and steel articles will not move freely by rail at rates which exceed the rail-and-water rates by more than 2 or 3 cents, and consequently on such articles as may move from Pittsburgh at charges of from 76.5 to 77.5 cents the rail lines are proposing a rate of 80 cents from Group D. On some iron and steel articles the port-to-port rates are 45 and 55 cents, and on these articles the all-rail rates proposed are correspondingly higher than the basic 80-cent rate. With respect to those commodities which move at a rate of 40 cents from the ports, the view seems to be that an all-rail rate of 80 cents from Chicago would not attract much, if any, additional traffic. The United States Steel Corporation, with its mills in the Chicago district and in the East, including one at Baltimore, Md., would continue to supply the Pacific coast from the eastern mills. Some increase in traffic might be expected from the independent mills in the Chicago district.

The views of the various parties interested in the transcontinental rates are substantially the same now as they were in 1921 when the former application was filed. The Middle West interest, with the exception of the iron and steel industries affiliated with the United States Steel Corporation, generally support the application. Their competition with eastern manufacturers has been growing more and more acute and business which they formerly enjoyed on the Pacific coast now moves largely from the East through the canal. They see no prospect of regaining what they have lost or of expanding their western trade unless the rail rates are reduced to a point where the rail charges will approximate the charges through the canal from other sources of supply. They have now some lower rail-and-water rates in connection with the Mississippi-Warrior service to New Orleans and thence through the canal, but they prefer the rail movement, as it is quicker and more convenient.

The interests on the Pacific coast are divided in their views. Generally speaking, the manufacturers there, other than of lumber, are opposed to the granting of the application, since to do so would open a new competitive field. Certain manufacturers, particularly of paper articles, express the opinion that the movement by water of many of the items listed in the application is not in sufficient volume to justify the rate reductions proposed. Jobbers and distributors at the coast ports would benefit by having the large producing districts of the Middle West made available to them as additional sources of supply at lower rates than they now enjoy. They therefore favor the application. Considerable testimony was offered by shippers interested in the movement of fruit, lumber, and flour-mill products eastbound. They generally favor the application, on the ground that any increase in the westbound traffic of the carriers would result in a better car supply for their products and might lead to reductions in their rates or, at least, prevent increases.

The intermountain country, other than certain of the lumber, fruit, mining, and flour-milling interests, remains almost a unit in opposition to an adjustment of rates under which traffic would move through to the Pacific coast for a less charge for transportation than would be available to the territory intermediate thereto. It is claimed, among other things, that the proposed rates would impose an undue burden upon the same character of traffic destined to intermediate territory; that they would be unduly preferential of both the origin and destination territories and prejudicial to the intermountain territory; that they would create numerous fourth-section departures not covered by the application; and that if, as contended by the applicants, they would be reasonably compensatory for the haul to the Pacific coast, they would be fully compensatory if applied at intermediate points. Manufacturers, jobbers, and distributors located at Salt Lake City, Butte, Boise, Spokane, interior California points, Phoenix, Reno, and elsewhere in the intermountain territory, insist that the reductions proposed in the all-rail rates would seriously curtail their territory of distribution and result in substantial losses. Their fear of loss of distributing territory is grounded to some extent upon their understanding that the jobbers on the Pacific coast predicate their selling prices upon the all-rail rates and not the water rates. This is denied by the coast dealers, who state that their general practice is to base all selling prices on articles which move by water on water rates.

Eastern manufacturers and shippers also generally oppose the application. They contend that the relief sought is based on market competition rather than water competition and that such competition is

not sufficient ground for fourth-section relief. They can see no justification for a basis of rates which will extend their natural advantage of proximity to economical water transportation to territory far inland and which will perhaps so seriously impair the earnings of the water lines as to result in the curtailment of service. Other eastern manufacturers are more particularly concerned with the disruption of the existing rate relationships which would be caused by the establishment of the proposed rates. It goes without saying that the water lines oppose the application. To the extent that the rail carriers would gain traffic, they would lose it. If, rather than see their business taken from them, they should reduce their port-to-port rates, the result would be a loss of revenue both to the water and to the all-rail lines. Neither would gain but both would lose. As above stated, carriers operating east of Chicago have not joined in the application although urged to do so by the western lines. The Boston & Maine and New York, New Haven & Hartford Railroads, New England carriers, actively oppose it.

That many of the commodities embraced in the application move in considerable volume through the canal is evident from the record. This is particularly true as to iron and steel. The efforts of the rail carriers to ascertain the exact tonnages of the different commodities have not been entirely successful because of the differences between the water and rail classifications, but from examination of the records of the port authorities of the various ports they estimate that the movement by water of the particular items enumerated in their application during the six months from June to November, inclusive, 1923, aggregated 861,907 tons, as compared with 195,471 tons all rail from all eastern defined districts to the ports, Los Angeles, and so-called back-haul territory in interior California, Oregon, and Washington. Their estimate of the tonnage of each commodity is shown below:

Estimate of tonnage

Commodity	By rail	Through canal
	Tons	*Tons*
Ammunition	245	367
Cotton piece goods	3,271	10,925
Soda alumina sulphate	25	
Lard and lard substitutes	4,003	4,118
Paint	6,597	8,104
Roofing material	5,845	4,541
Rosin		6,311
Soap	3,227	13,154
Soda	1,255	9,824
Iron and steel	156,085	779,369
Paper	14,918	25,194
Total	195,471	861,907

The applicants assert that all they are asking for here is permission to make such rates as will afford them an opportunity to enjoy a fair share of the transcontinental traffic. They argue that no harm can come to the interior territory if a larger proportion of the traffic is diverted to the rail lines, since the Pacific coast can now obtain the same commodities at transportation costs lower than under the rates they are proposing, but that, on the contrary, the benefits which they may be able to realize will place them in position to afford all their patrons better service. They insist that it is not only their right but their duty, and that efficient management would require them to employ all lawful means to secure a larger share of this traffic, if thereby they are able to increase their net revenues without burdening other traffic. They urge particularly that the relief sought will afford tonnage for empty cars moving westbound, of which there are apparently sufficient to transport all the traffic now carried by the water lines.

Elaborate statistical data were introduced by the carriers to prove that the proposed rates would more than cover the extra expense of handling the additional traffic which they expect to obtain. Taking the total operating expenses of all Class I roads in the western district for the first nine months of the calendar year 1923, excluding switching and terminal companies, they estimate the expense chargeable to all freight traffic on the basis of the apportionment between freight and passenger services used in Express Rates, 1922 (83 I. C. C. 606). This produced a freight proportion of 71.76 per cent, or an operating cost per gross-ton mile of 3.52 mills. In determining the cost of handling added traffic the carriers first assign 33⅓ per cent of maintenance-of-way expenses and 80 per cent of maintenance-of-equipment expenses to the movement of traffic, the remainder of these expenses being charged to the action of the elements, and then proceed to estimate the transportation costs on two bases. Basis I is on the theory that the added traffic could all be carried in trains now operating, and therefore would not require additional train-miles, while Basis II assumes a pro rata of added train-miles. Under Basis I, 18.56 per cent of the present transportation expense per unit is charged to this added traffic, and under Basis II 64.88 per cent. These percentages, combined with one-third of the similar maintenance-of-way expense and 80 per cent of the maintenance-of-equipment expense, result in ratios to total operating expense per unit of 38.65 per cent and 60.34 per cent, respectively, or an average of 49.5 per cent. A more complete explanation of these two methods of estimating the cost of handling the traffic appears in the former report. Appendix II thereto shows in detail the items and proportions assigned by the carriers on the two bases.

From statistics of car-miles and ton-miles, as reported by the western lines to this commission, the carriers compute the cost per gross ton-mile under the average of cost Bases I and II and separately under Basis II. Assuming no added train-miles the cost per gross-ton mile is shown to be 1.7435 mills, and under the assumption of pro rata added train-miles, the cost becomes 2.1256 mills. These costs are applied to the gross tons per car under the proposed minimum weights of 40,000, 50,000, 60,000, and 80,000 pounds, using as the average distance from Group D to the Pacific coast 2,400 miles, and from Group J 1,650 miles, and assuming both 25 per cent empty haul and no empty haul. The final results of these computations, showing the costs per car and per 100 pounds under the different minima, are given below, as a statement of estimated costs of handling added traffic from Groups D and J to Pacific coast terminals:

	Costs assuming 25 per cent empty haul		Costs assuming no empty haul	
	Per car	Per 100 pounds	Per car	Per 100 pounds
For carload of 40,000 pounds:				
Basis I—		*Cents*		*Cents*
Group D	$207.86	51.96	$186.10	46.53
Group J	142.90	35.73	127.94	31.99
Basis II—				
Group D	253.42	63.36	226.89	56.72
Group J	174.23	43.56	155.99	39.00
For carload of 50,000 pounds:				
Basis I—				
Group D	228.78	45.76	207.02	41.40
Group J	157.29	31.46	142.33	28.47
Basis II—				
Group D	278.93	55.79	252.39	50.48
Group J	191.77	38.35	173.53	34.71
For carload of 60,000 pounds:				
Basis I—				
Group D	249.71	41.62	227.94	37.99
Group J	171.67	28.61	156.71	26.12
Basis II—				
Group D	304.44	50.74	277.91	46.32
Group J	209.30	34.88	191.06	31.84
For carload of 80,000 pounds:				
Basis I—				
Group D	291.55	36.44	269.79	33.72
Group J	200.44	25.06	185.48	23.19
Basis II—				
Group D	355.45	44.43	328.92	41.12
Group J	244.37	30.55	226.13	28.27

It will be observed that for a 40,000-pound carload the maximum out-of-pocket cost shown is 63.36 cents per 100 pounds, for a 50,000-pound carload 55.79 cents, for a 60,000-pound carload 50.74 cents, and for an 80,000-pound carload 44.43 cents. As against these out-of-pocket costs the lowest rates the carriers are proposing are for a 40,000-pound carload $1, for a 50,000-pound carload 90 cents, for a 60,000-pound carload 75 cents, and for an 80,000-pound carload $16 per long ton, equivalent to 71.43 cents per 100 pounds. In each case, therefore, the proposed rates materially exceed the out-of-pocket cost as computed by the carriers.

The computation of these costs has necessarily required numerous assumptions not susceptible of accurate determination. For illustration, it has been assumed that two-thirds of the cost of maintaining the fixed property is due to the action of the elements and but one-third to the movement of traffic, and similarly, that one-fifth of the cost of maintaining equipment arises from weather conditions and four-fifths from traffic. Other assumptions have been made in determining the extent to which the various transportation accounts would be affected by added traffic. It can not be said with confidence that figures computed in this manner approximate the cost of the service. The same method as applied in the former case gave quite different results. These figures, however, are not seriously disputed by other parties to the record and may be accepted as indicating that the rates proposed would pay something over and above the out-of-pocket cost. This is further indicated by comparison with certain export rates now in effect from Chicago to Pacific coast terminals. Among other rates which might be cited are rates of 40 cents, minimum 80,000 pounds, on iron and steel articles; 63 cents, minimum 60,000 pounds, on cast-iron pipe; 76 cents, minimum 50,000 pounds, on castings; and 80 cents, minimum 40,000 pounds, on paint.

If the applicants are to benefit through the establishment of the rates here sought to be made effective they must necessarily first offset the losses which would result on the traffic now moving all rail. They estimate that if the proposed rates had been in effect during the months of May, June, July, and August, 1923, the loss of revenue on iron and

steel articles would have been $207,531, on articles of paper $38,285, and on all other commodities listed in the application $41,335, a total loss of revenue in four months of $287,151, or, assuming the same relative volume of tonnage, $861,453 during the year. It would have required about 69,500 additional tons of iron and steel, 12,000 tons of paper, and 11,500 tons of all other commodities to equalize this loss.

If the hopes of the western lines should be realized, a substantial volume of traffic would be diverted from interior eastern points of origin to Chicago territory. The eastern lines would then be deprived of the revenue which they now derive from the movement of such traffic to the Atlantic ports. No estimate of this loss appears in the record. With an all-rail movement from Chicago of 300,000 tons of iron and steel per year and a gain of 50 per cent because of the reduction in the rail rates the eastern lines would lose the revenue on 150,000 tons. If this tonnage should be lost to the Pittsburgh district the eastern lines would lose in the neighborhood of $1,000,000. At 40 cents per 100 pounds, the loss to the water lines would exceed $1,000,000.

The gain to the western lines would about offset the loss to the eastern carriers and water lines. However, not only would the eastern carriers suffer a loss of revenue through a reduction in the water-borne traffic but the increase in the spread between the all-rail rates from Chicago and from the East would tend to deprive them of a considerable proportion of such traffic as now originates in the East and moves all rail. Wrought-iron pipe, for example, originates in the Pittsburgh district and in the Chicago district. The present all-rail rate from Pittsburgh to San Francisco is $1.40 and from Chicago $1.25, a difference of 15 cents. If the application is granted, the rate from Pittsburgh, under the aggregate-of-intermediates provision of the fourth section, could not exceed $1.34, or 34 cents higher than the rate of $1 proposed from Chicago. It is also to be observed that the rate from Pittsburgh would become 6 cents lower to the terminals than to intermediate territory, a departure from the provisions of the fourth section which the lines serving Pittsburgh are not asking.

The western lines claim that their investigation of the charges available from eastern manufacturing points by way of the canal demonstrates that the rates they are proposing are not lower than necessary to meet the existing water competition, but are as high as they can be made and still attract the traffic. The water lines contend, however, and in this they are supported by many of the eastern and Pacific coast shippers, that when consideration is given to the incidental charges which must be paid on shipments moving by water, the disadvantages connected with water service, and the interest on the investment in the property being carried for the time required for the movement by water in excess of that required for rail transportation, the rates which the rail carriers are proposing are unjustifiably low.

As already stated, the incidental charges for the transportation by water consists in the main of wharfage, handling, and marine insurance. The record shows that the combined charge for wharfage and handling at San Pedro is about 70 cents per ton, or 3.5 cents per 100 pounds; at San Francisco, 67 cents per ton, or 3.35 cents per 100 pounds, including a State toll tax of 15 cents per ton; and at Portland, Tacoma, and Seattle, $1.05 per ton, or 5.25 cents per 100 pounds. If material delivered at the wharves is switched to the point where it is to be used, the charge at San Francisco is 34 cents per ton plus $3.50 per car, or about 2.25 cents per 100 pounds, and at Portland, Tacoma, and Seattle from $8.55 to $14 per car, averaging about 1.5 cents per 100 pounds. As the material is usually switched or drayed to points not on the water front, it is proper to consider these switching charges in determining the cost of transportation by way of the canal.

Insurance is based on value and therefore varies with the different commodities, and their values vary. An exhibit introduced by the water lines shows average insurance costs ranging from 1 cent per 100 pounds on structural iron and steel to 50 cents on cotton piece goods.

Next to iron and steel articles the most important commodity named in the application from the standpoint of tonnage is paper. Paper is produced in large quantities in the Pacific coast States, in Wisconsin and Michigan, and in New York and New England. The production on the Pacific coast is principally newsprint, wrapping paper, paper bags, and tissue paper. Newsprint paper, not included in the amended application, constitutes the major portion. The finer grades of paper consumed on the Pacific coast are manufactured in the Middle West and in the Eastern States. Manufacturers in Wisconsin and Michigan claim that there has been a marked decline in their western tonnage which they attribute to the difference between the all-rail rates from their mills and the rates from the eastern mills through the canal. The Pacific coast manufacturers do not, as a whole, oppose the granting of fourth-section relief on paper originating in Wisconsin and Michigan; but contend that the rate of $1 proposed is unnecessarily low, and in so far as many of the paper articles are concerned, is not warranted by the volume moving by water. They refer to a water movement to Los Angeles, San Francisco, and Portland in 1923 of only 210 tons of blotting paper, 69 tons of gummed paper, 36 tons of oil paper, 59 tons of shelf paper, and similar amounts of other classes, as indicating that as to such classes no real need is shown for a reduction in the all-rail rates. There is a substantial movement of various other classes of paper through the Atlantic ports, however, some of which originates as far west as the Wisconsin mills.

The rates from the eastern mills to the nearest Atlantic ports vary from 11.5 to 28.5 cents and over. The rate on wall paper from Chelsea, Mass., to Boston, for example, is 11.5 cents, and from Hudson Falls, N. Y., to New York City, 28.5 cents. The water rate is 70 cents. With insurance and incidental charges the manufacturer at Chelsea would pay approximately 90 cents to San Francisco, while the manufacturer at Hudson Falls would pay about $1.05. Printing paper, wrapping paper, and paper bags move to the Atlantic ports from typical eastern mills at rates from 14 to 25 cents. The water rate on these commodities is 65 cents. With insurance at 3.5 cents per 100 pounds and incidental charges added, the through charges from the mills range from 85 to 96 cents. The cost of preparing shipments of paper for ocean transportation adds something to the expense of the water movement—in one case, at least, as much as 6 cents per 100 pounds. The proposed rate of $1 from Group D includes but a slight margin for the superiority of rail service.

The purpose of reducing the rate on ammunition, the first item embraced in the amended application, is to assist a manufacturer at East Alton, Ill., in meeting the competition of eastern manufacturers and thus to induce a larger movement by rail. The eastern manufacturers particularly referred to are located at Bridgeport, Conn., New Haven, Conn., and Kings Mills, Ohio. The cost of transportation from Bridgeport to the nearest Atlantic port, New York City, is 27.25 cents, the water rate is 65 cents, and incidental charges at San Francisco, a representative port, amount to 3.35 cents. The insurance paid by the Bridgeport manufacturer is 8 cents per 100 pounds on shotgun shells and 23 cents on rifle shells. Shotgun shells comprise about three-fourths of the shipments, and consequently the average insurance paid would approximate from 12 to 15 cents. Taking 15 cents as the average, the through charges from Bridgeport would be about $1.105. On a shipment from New Haven delivered at the shipper's warehouse in San Francisco the various charges, including drayage, aggregate $1.115. The manufacturer at Kings Mills would pay 40 cents to Baltimore and slightly over 78 cents from Baltimore to San Francisco, producing a charge of approximately $1.18. To meet these charges, the carriers propose to publish a rate of $1.10 from East Alton. A combination rate of $1.10, inclusive of incidental charges, is available from East Alton to San Francisco on bullets and shot by way of the Mississippi-Warrior Service to New Orleans, thence through the canal.

Cotton piece goods are included in the application. These articles are not manufactured in Chicago, but are brought in from various points of production for distribution throughout the West. The retailer, as a rule, buys from a distributor rather than from a mill, and the purpose of the reduction proposed in the all-rail rate is to put the Chicago distributor on a more nearly equal basis with the distributor in New York. The water rate on cotton piece goods from New York to San Francisco is 75 cents. Handling charges are 3.35 cents, and insurance averages from 30 to 50 cents, making the aggregate charge from about $1.08 to $1.28. If the retailer on the coast purchased these articles at the mill at Fall River, Mass., the charge for the through movement would be 35.5 cents more; if at Providence, R. I., 34 cents more; and if at Greensboro, N. C., 45 cents more. The present rate from Chicago is $1.58, which it is proposed to reduce to $1.10. This is as low as or lower than the port-to-port rate with incidental charges added. Apparently the lowest rate available on cotton piece goods from Chicago in connection with the Mississippi-Warrior Service is $1.28.

It is unnecessary to proceed through the entire list of commodities enumerated in the application. Considered as a whole, it can not be said that the proposed terminal rates, with the exception of the rate on ammunition, are lower than would be necessary to permit the Middle West manufacturers to compete on relatively equal terms with manufacturers located at some distance from the seaboard who ship their products through the Atlantic ports. But before the relief from the operation of the fourth section which is here sought may be granted we must be satisfied that there would not thereby be created infractions of other provisions of the act, particularly those of section 3 prohibiting undue or unreasonable preference or advantage of or prejudice or disadvantage to persons or localities. We should likewise be convinced that the adjustment proposed will result in the substantial benefits which its proponents anticipate.

The relief sought is based primarily on market competition. Because Pittsburgh enjoys certain rail-and-water rates on iron and steel to the Pacific coast, the western carriers are proposing all-rail rates, not from Pittsburgh but from Chicago, approximately the same as the rail-and water rates from Pittsburgh, and are blanketing those rates as to origin territory as far as the Colorado common-point line, departing from the blanket adjustment only at Minnequa, Colo., because of the order entered in Colorado Fuel & Iron Co. *v.* Director General (57

I. C. C. 253) prescribing rates from Minnequa not in excess of 77 per cent of the rates from Chicago. Thus the natural advantage of location near the Atlantic seaboard which Pittsburgh enjoys is to be neutralized by extending it to points from 500 to 1,500 miles farther away. Manufacturers of other commodities in the Middle West would likewise be accorded a basis of rates to which they are not legitimately entitled by any natural advantage which they possess, whereas the manufacturers of the same commodities on the seaboard would have their advantage taken from them or diminished. While the manufacturers in the Middle West in effect would thus have accorded to them the advantage of proximity to water transportation, and would be placed more nearly on an equality with the eastern manufacturers with respect to shipments of the latter moving to the Pacific coast ports through the canal, they would not only continue to enjoy the advantage of their more westerly location on traffic moving all rail from the East, but this advantage would be increased.

Reference has already been made to the increase from 15 to 34 cents in the spread between the all-rail rates on wrought-iron pipe from Pittsburgh and Chicago. Rates on other commodities from other eastern points would be similarly affected. Paint, for example, is manufactured in Cleveland, Ohio, and in Chicago. The all-rail rate from Cleveland to the Pacific coast is now $1.40, or 15 cents higher than from Chicago. The proposed rate from Chicago is $1. Under the aggregate-of-intermediates provision the Celveland rate would be reduced to $1.30 to the terminals, 30 cents higher than from Chicago, but to intermediate points it would remain $1.40. (See the discussion of these same points at pages 81–83 of the report in Transcontinental cases of 1922, supra.)

It is important to note also the effect the proposed reductions would have on the dealers and consumers on the Pacific coast and in the intermountain States. At the present time they are on an equality in purchasing in the Central West. If the reductions sought in the terminal rates are granted, this equality will no longer obtain. The Pacific coast dealers will retain their present ability to purchase more cheaply in the eastern markets and in addition will have the advantage of being able to purchase in the markets of the Middle West upon more favorable terms. The differences in freight costs per minimum carload would range from $90 on some commodities to $192 on others, not inconsiderable amounts. As explained in the former report, it is not always possible to purchase a desired commodity on favorable terms at every point, nor is it always possible to find a supply available at every point. Dealers in the intermountain country and on the Pacific coast purchase in the same markets and compete for sales in the same territory. With the eastern markets now closed to the intermountain dealers except on payment of higher freight rates, and the Middle West available on equal terms with the Pacific coast dealers, to accord to the latter the markets of the Middle West also on more favorable terms than can be obtained by the intermountain country must necessarily be prejudicial in effect. (See the discussion of these same points at pages 81–83 of the report in Transcontinental cases of 1922, supra.)

The record is far from convincing that the establishment of the proposed rates will result in the benefits which the applicants anticipate. It appears that when the reduction of 35 cents was made in the rates on iron and steel articles from Chicago to the Pacific coast terminals in April, 1923, no real benefit accrued to the Chicago mills, nor was the situation materially helped when the water lines increased their rate from 30 to 40 cents some months later. The traffic continued to move from the eastern mills, many of which are nearer the seaboard than is Pittsburgh. It is said that to meet the competition of the mills east of Pittsburgh it would be necessary to establish a rate from Chicago as low as 60 cents.

The proposed rates on iron and steel articles, from which the applicants hope to obtain their greatest increase in net revenue, might be expected to divert some of the traffic which now originates in the Pittsburgh district if the rail-and-water rates from Pittsburgh remain the same. There is no assurance, however, that the eastern rail carriers and particularly the water lines would permit any substantial diversion of their traffic without making an effort to retain it. They would be urged to take this action by eastern manufacturers whose business would suffer through loss of their Pacific coast trade, and the record shows that in one instance a committee has already been appointed to appeal to them for offsetting rate reductions in the event the proposed rates are permitted to become effective. A slight reduction in the water rate would suffice to retain the advantage to the rail-and-water route, and this would call for further reductions in the rates of the western carriers to bring about the near equalization of the Middle West and eastern markets. On the other hand, if the western carriers were not inclined to meet reductions in the water or rail-and-water rates the competitive situation would remain as it is at present, the revenues of the applicants and the water lines would be unnecessarily reduced, and the Pacific coast shippers would receive the only advantage.

The opportunity for shrinkage in the rail-and-water rates from interior eastern points will be clear when it is borne in mind that the eastern carriers now charge full local rates to the seaboard, and that it is more profitable for the water lines to accept westbound traffic at very low rates rather than that their ships shall sail under ballast.

There is another phase of this matter which must not be overlooked. Section 500 of the transportation act, 1920, declares the policy of Congress to be "to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation." The field of operations of the water lines is restricted to a comparatively narrow area along the Atlantic seaboard and to a much narrower area along the Pacific coast. Since but little traffic originates at the ports, the water lines must reach out for it into the interior. The inherent disadvantages of shipping by water prohibit them from competing with the rail lines at points where the combined rail and water charges equal the all-rail charges, and consequently the territory from which they may draw traffic is confined to an area from which the rail rates plus the water charges are substantially lower than the all-rail rates.

Their destination territory is confined almost exclusively to the Pacific coast cities. Unlike the rail carriers they have no intermediate territory from which to draw or to which to deliver traffic. It is strongly urged, therefore, that to permit the western carriers to publish the proposed rates from Chicago for the avowed purpose of depriving the water lines of a substantial portion of such traffic as they are now able to obtain would be to disregard wholly the policy of Congress to promote, encourage, and develop water transportation. To be of material benefit to the rail carriers a substantial portion of this tonnage must be diverted to their lines. The declared policy of Congress is to foster and preserve in full vigor both rail and water transportation.

If the hopes of the applicants should be realized the benefits which they as a whole might obtain from the granting of the application would be greatly disproportionate to the loss which the water lines would suffer. The record shows that the total tonnage, both eastbound and westbound, of all the water lines is but a very small fraction of that of the transcontinental carriers operating west of Chicago. It is evident, therefore, that the diversion of any substantial tonnage from the water lines would have but an inappreciable effect on the net revenues of the rail carriers. On the other hand, it might very seriously impair the ability of the water lines to maintain their present standard of service.

Upon full consideration of the record we find that the application for authority to depart from the long-and-short-haul provision of the fourth section of the act should be denied.

An appropriate order will be entered.

Eastman, chairman, concurring:

Relief from the fourth section is sought in this case chiefly because of what is called market competition. Broadly speaking, there is no carrier competition between the origin territory in question and the Pacific coast which makes it necessary to depress the rates, but relief is sought because competing territories of production in the East are so located that by use of the ships operating through the canal they can reach the Pacific coast more cheaply. In a separate expression of opinion in "Paper and paper articles to New Orleans" (88 I. C. C. 345, 351–353), I gave my views as to market competition as a basis for fourth-section relief. Without repeating all that was there said, I indicated that while we may lawfully grant relief because of such competition, we have discretion to grant or deny, and I expressed the opinion that we ought in all cases to deny relief where market competition is offered as the justification. Among other things I said that "the theory of market competition, if followed consistently, will inevitably lead to all manner of cross-hauling and wasteful competition for which the country must in the end pay."

This thought may be illustrated by the present case. One of the most important commodities involved is paper. It is produced at Wisconsin and Minnesota mills, and the carriers seek fourth-section relief so that they can reduce the rates from these mills to the Pacific coast below the rates to intermediate points in order to meet the competition of eastern mills shipping to the coast through the canal. It happens that the eastern mills are so located that they now have an advantage in the Pacific coast trade. But there is much important consuming territory in which the Wisconsin and the Minnesota mills have a like advantage. Take St. Louis as an illustration. The northwestern mills there have a substantial rate advantage over the eastern mills. If the western carriers are entitled to fourth-section relief so that they may meet the competition of the eastern mills at the Pacific coast, why are not the eastern carriers entitled to relief so that they may meet the competition of the western mills at such points as St. Louis? Bear in mind that there is a westbound movement of empty cars in official territory comparable to that which exists in western territory. The notion that there is anything unique about the movement of empty cars in the latter territory is quite without foundation. The above is only one illustration out of many that might be given. It supports the conclusion that the theory of market competition, if followed by the carriers consistently and fairly, as of

course it must be, will inevitably lead to all manner of cross-hauling and wasteful transportation without real advantage to anyone and with detriment to the country as a whole.

One further comment: The statement is made in the dissenting opinion that the water lines can not afford to reduce their rates. Doubtless that may be true, but it does not support the conclusion that they would not reduce their rates if the fourth-section relief sought in this case should be granted. The water lines can less afford to lose a substantial volume of traffic. The opportunities for rate shrinkage in the case of the traffic which moves from interior eastern points to the Atlantic coast and thence by canal to the Pacific coast are pointed out in the majority report. This is the traffic, rather than that from the eastern ports, which the western carriers hope to make inroads upon. The charges now applicable to it can be reduced by the eastern rail lines alone, by establishing proportional rates to the ports lower than the present local rates, or by the water lines alone, by establishing similar proportional rates from the ports, or by both sets of lines in conjunction. Moreover reductions can be made in any one of these three ways without corresponding reductions in the local rates applicable to and from the ports. In most cases only a slight reduction would be necessary to tip the balance again in favor of the canal route. The suggestion in the dissenting opinion that a heavy reduction would be necessary in the case of iron and steel from Pittsburgh is manifestly in error.

Lewis, commissioner, concurring:

This case emphasizes the necessity of placing the intercoastal water lines under the same regulation as that to which the transcontinental rail lines are subjected. They are here shown in direct competition in and for interstate traffic. The declaration of Congress is that both be maintained in full vigor. The rail lines are placed at a very unfair disadvantage. They are held to rigid restrictive requirements. Their competitors, some of which have most affluent affiliations, may war to the hilt with cut rates without hindrance. There is ample reason afforded by the record before us to forecast that if the railroads were granted fourth-section relief herein prayed, competitive water carriers, if not themselves moved to protect their tonnage, would bend to the demand of industry or sections served. The result would be that the cut made by the land carriers would be met and the flow of traffic would be maintained as at present. The western carriers would be hauling traffic to the ports for a million dollars less than at present, the eastern carriers would be worse off, and the water carriers would also be weaker—all quite contrary to the mandate that both land and water transport be maintained in full vigor. If the water lines should later find it desirable to withdraw their cut rates, they would be quite free to do so. The rail lines, however, would be trapped. Their rates would be held to that low level to which they had been reduced to meet water competition, until the carriers were able to justify increases on the grounds of "changed conditions other than the elimination of water competition"; and experience has demonstrated upward revision is most difficult to obtain.

I fail to see the justice of subjecting one interstate carrier to regulation and leaving the other to sail the seas free to scuttle both itself and its land competitor, or how there can ever be brought about an understanding and solution of this contest until both carriers are placed under one agency of regulation. Such would be a natural corollary of the mandate of Congress that both forms of transportation be maintained in full vigor. The construction of the Panama Canal has created new and grave transportation problems, which are becoming acute now that ships that were withdrawn from water service during the war are returning to it and large industries are putting ships into service for the transport of their own wares. Justice to both systems of transport and, more particularly, to shippers and sections of country affected require that proper relationships be established, to the end that both systems of transportation may properly develop and that there may be equitable opportunity in the production and distribution of commodities.

Woodlock, commissioner, concurring:

I concur in the result reached by the majority, but I do so mainly for reasons other than those given in the report. The main consideration which influences me is the present unsettled status of the canal as regards vessel rates on coast-to-coast business.

The canal was built with public money for the combined security and benefit of all the people of the United States. It is a new piece of transportation machinery, which should be coordinated with and adjusted to the existing railroad system of the country, so that the best results may be obtained from both. The public is entitled to the fullest possible exploitation of the legitimate capacity of the canal for economical transport of freight by ships between the two coasts. Whatever may be that capacity, it should be recognized, appraised, and expressed in the rates on water-borne traffic through the canal. These rates should be stable and public, and should be subject to the same regulatory authority as that which controls the rail rates; otherwise no coordination of rail and water will be possible. Only after prescription of a reasonable minimum rate tariff on water-borne traffic between the coasts will it be possible to measure the permanent effect of the canal upon the railroad structure, and to deal with the railroad rate structure intelligently. To attempt to do so at present, with canal rates neither stable nor public, would be but to incur serious risk of wide disturbance in both rail and water rates with consequent unnecessary and uneconomic loss of revenue to all concerned. The first and most necessary step to a proper settlement of the matter is to place the canal rates under the regulative jurisdiction of this commission with a view to prescription of minimum coast-to-coast rates. In my judgment, the Congress should legislate to this effect at as early a date as possible.

Whether or not, this having been done, fourth-section relief should then be granted to the transcontinental lines will be a question to be settled in the light of the facts as they may then appear. It may be that the facts will warrant such relief, and it may be that they will not. No one can at this time say with certainty. Certain broad principles exist, however, which must be applied to all fourth-section cases, and they will have to be applied to this case when it is ripe for their application.

Section 4 adds nothing essential to the act. It is merely a special expression of something which is already contained in preceding sections. The first three sections of the act deal with the fundamentals of rates. A rate which is reasonable, i. e., not too high, but properly compensatory, under section 1, and which is neither unduly preferential nor prejudicial, under section 3, is a just, fair, and equitable rate, whether or not it be lower for the longer distance than for the shorter distance. No rate can properly be permitted under fourth-section relief which does not fulfill the conditions imposed by sections 1 and 3. From this is readily apparent the fundamental unsoundness of legislation looking to absolute exclusion of such relief. It is also apparent that to prohibit fourth-section relief in the case of "water competition" or "market competition" is equally unsound. What good reason can exist for prohibiting the making of rates which are in themselves just and lawful under sections 1 and 3? To do so would be to prefer one kind of transportation or one district as against another, and thus prevent the full and free play of that kind of competition of which the act, both in letter and spirit, enjoins the preservation.

The underlying theory on which fourth-section relief is granted in a given case must be that it offers the most economical possible use for the facilities employed in the traffic which moves under the rate. The public interest is best served when all existing facilities are economically employed. From this is apparent the fallacy in the argument, frequently advanced in opposition to the grant of fourth-section relief in the instant case, that if the terminal rates under this relief from western trunk-line territory are compensatory they must ipso facto be more than reasonable maximum rates to intermediate points. But if the cars can only be filled to terminal points and if the rate at which they can be so filled, while fully compensatory under the circumstances of the movement would not be compensatory if applied to all the business moving to intermediate points, how can the terminal rate be a maximum reasonable rate to intermediate points? Yet fourth-section relief can only be properly granted to terminal points on the hypothesis above described. It is also argued that even if canal rates are brought under our regulation and a minimum tariff prescribed the ships plying in coast-to-coast trade should have the same privilege as the railroads of filling the empty space in their holds at rates which will attract the freight, seeing that almost any rate would be compensatory on such freight. There is a twofold fallacy in this argument. In the first place there is no intermediate traffic to be considered; it is all coast-to-coast business. In the second place whatever minimum tariff may be established will be established upon the basis of some general average percentage of load, having regard to the expense of operation and return on investment. It would not be compatible with the public interest that such minimum rate should be reduced occasionally and irregularly when a vessel happened to have empty space available. Such a proceeding would make it quite impossible effectively to stabilize canal rates. Stabilization of those rates is the keystone of the arch, so far as the matter of westbound rates by rail and water to the Pacific coast and intermediate territory are concerned.

In my opinion the situation as it stands to-day is not ripe for action such as is requested by the carriers. Whether it ever will be is an open question. The answer to it can be determined only when the canal has been definitely adjusted to the transportation system of the country, as above suggested.

Esch, commissioner, dissenting:

I do not agree with the conclusion of the majority that this application should be denied, nor am I satisfied with the statement of facts in the majority report, and in view of the importance of the case I am setting forth at some length my views upon the facts shown of record.

Applicants propose the reduced rates to the Pacific ports because of the diversion in increasing quantities of traffic from their lines to the water lines. To some extent this diversion is from the all-rail lines to routes from the origin territory in the Middle West via

Atlantic or Gulf ports and the Panama Canal, but to a much greater extent it is from the all-rail lines serving the origin territory to the water or rail-and-water routes from points on or nearer the Atlantic seaboard. They expect the proposed rates to regain sufficient traffic to more than offset the reductions and increase their net revenues. But they do not propose to apply such rates at intermediate points on the ground that the reductions to such points over a large territory not much affected by water competition would more than offset the gain on traffic to the ports and seriously affect their revenues.

HISTORY OF TRANSCONTINENTAL ADJUSTMENT

The history of the transcontinental rate adjustment appears to have been given little, if any, consideration by the majority, judging from the brief reference to it in the report. The history of a rate adjustment is always entitled to consideration in any case, and I think it is especially important in this case.

Almost from the beginning of rail operations to the Pacific coast in 1869 the rail lines maintained rates from the East to the Pacific ports which were lower than their rates to intermediate points in order to meet the competition of the water lines. Prior to 1914 the traffic moving by water had to be transferred by rail across the Isthmus of Panama or the Isthmus of Tehuantepec unless it moved by the long route around Cape Horn or through the Straits of Magellan. To permit the rail lines to meet this competition, we authorized them to depart from the long-and-short-haul rule with respect to commodities that might move by water. Railroad Commission of Nevada *v.* N. P. Ry. Co. (21 I. C. C. 329); City of Spokane *v.* N. P. Ry. Co. (21 I. C. C. 400). These decisions which were rendered in 1911 were sustained by the Supreme Court in Intermountain Rate Cases (234 U. S. 476).

The construction of the Panama Canal, which was opened in 1914, lowered the costs and improved the service of the water lines so that the rail lines found it more difficult to compete with them. Upon an application for further fourth-section relief, it was suggested that the construction of the canal by the Government was indicative of a policy to secure all of the coast-to-coast business for the water lines, and that no adjustment of rail rates should be permitted which would take from the ships traffic which normally might be carried by them. In rejecting this suggestion we pointed out that the Government had also aided the construction of some of the transcontinental rail lines and expressed the view that "the Panama Canal is to be one of the agencies of transportation between the East and the West, but not necessarily the sole carrier of the coast-to-coast business." Additional relief was granted January 29, 1915. Commodity Rates to Pacific Coast Terminals (32 I. C. C. 611).

Commencing in 1916, the steamship lines largely withdrew from the coast-to-coast service and placed their ships in foreign trade, which was then more lucrative. On June 30, 1917, in Transcontinental Rates (46 I. C. C. 236), we found that the water service then existing did not warrant the rail carriers in maintaining lower rates to the Pacific coast than were normal or less than to intermediate points. We therefore required them to revise their rates in accordance with the fourth section, but it was recognized that the water competition would return in force sometime and that the rail lines might then be entitled to relief. After referring to the inability of the rail carriers to compete with the water carriers under ordinary circumstances without fourth-section relief, we expressed the opinion that the best interests of the public, of the transcontinental carriers, and of the intermountain cities in particular would be served by permitting the transcontinental carriers to share with the water lines in the traffic to and from the Pacific coast ports. As in some of our previous reports, it was pointed out that to the extent this traffic increased the net revenues of the carriers the burden on other traffic and localities would be lightened. We further said at page 276:

"When the water competition again becomes sufficiently controlling in the judgment of the carriers to necessitate the reduction of the rates to the coast cities to a lower level than can reasonably be applied at intermediate points, the carriers may bring the matter to our attention for such relief as the circumstances may justify."

Pursuant to our decision in the last-cited case, the carriers removed the fourth-section departures, generally by increasing their rates to the terminals to the level of the rates to intermediate points. This adjustment was approved in Transcontinental Commodity Rates (48 I. C. C. 79) and took effect March 15, 1918.

In 1919 the Intermediate Rate Association filed a complaint seeking lower rates to intermountain territory than to the coast. A comprehensive record was made which dealt largely with the question of whether the rates should be graded according to distance. In our report decided March 29, 1921, we pointed out that coast-to-coast water competition had again manifested itself to some extent and stated that there was ample indication that it would further develop and increase to warrant the belief that within a comparatively short time it would reach a point where it would be felt in a serious loss of tonnage by the rail lines unless they had available appropriate measures to meet the situation. We found that the rates assailed had not been shown to be unreasonable or unduly prejudicial, and the complaint was dismissed. Intermediate Rate Asso. *v.* Director General (61 I. C. C. 226).

In August, 1921, the railroads filed an application for fourth-section relief, which was considered in Transcontinental Cases of 1922 (74 I. C. C. 48). We found that the water competition was then keener and the service more efficient than at any time before the war. The provision of the fourth section as amended by the transportation act, 1920, that no charge should be authorized to or from the farther distant point that is not reasonably compensatory, in connection with other provisions of the law, was interpreted as follows:

"In the light of these and similar considerations, we are of the opinion and find that in the administration of the fourth section the words 'reasonably compensatory' imply that a rate properly so described must (1) cover and more than cover the extra or additional expenses incurred in handling the traffic to which it applies; (2) be no lower than necessary to meet existing competition; (3) not be so low as to threaten the extinction of legitimate competition by water carriers; and (4) not impose an undue burden on other traffic or jeopardize the appropriate return on the value of carrier property generally, as contemplated in section 15a of the act."

We were satisfied that the proposed rates generally and easily covered the extra out-of-pocket expenses involved in handling the additional traffic that might move thereon, and they did not appear to be any lower than necessary to meet the water competition. But we found that the carriers had failed to make an affirmative showing as to the collateral losses of revenue that might result from the proposed rates. The majority opinion also criticized the proposal to apply the same rates from Chicago and other interior points as from points on or nearer the Atlantic coast, and it referred to the handicap the intermountain country would be under in competing with the Pacific coast under such an adjustment. The application was denied.

Thereafter the carriers reduced their rates to the ports to meet the water competition as far as possible and not having fourth-section relief applied the same rates to intermediate points in the interior. The rates so established from Group D or Chicago territory were about the same as those proposed to the ports in the fourth-section application, and the rates from the other groups were based on the usual differentials over or under that group. It will thus be seen that although the 1921 application was denied largely because of the failure of the carriers to show that their gain on additional traffic would exceed their loss on existing traffic, the carriers saw fit to establish reduced rates to the ports substantially as proposed in the application and applied the same rates to intermediate points, which of course resulted in a greater reduction of their revenues on existing traffic.

There was nothing in our report in Transcontinental Cases of 1922, however, to indicate that the carriers might not file another application, in accordance with our suggestion in Transcontinental Rates, especially if the water competition should continue to increase.

INCREASE IN WATER COMPETITION

The majority report refers to some of the facts indicating the increase in water competition since the hearings on the last application in 1921. The figures given in the report as to iron and steel articles moving from all the groups, A to J, inclusive, to the Pacific Coast States show that the rail tonnage was nearly equal to the water tonnage in 1921, while in 1922 the water tonnage was more than four times that by rail, and in 1923 the water tonnage was about five and one-half times the rail tonnage. The figures given in the report as to all of the commodities covered by the application show that the rail tonnage from all points to the terminals and so-called back-haul territory was approximately 18 per cent and the water tonnage 82 per cent of the total movement in 1923. In our report on the 1921 application we said that it appeared that somewhere near half of the traffic covered by the application was moving by the rail lines. It is said that before the war the water lines handled about 10 per cent of the Pacific coast traffic.

The inroads which the water lines are making on the traffic of the rail carriers are felt by the Chicago & North Western, Chicago, Rock Island & Pacific, and other lines serving the Middle West, as well as the transcontinental lines which reach the coast. The through transcontinental traffic is particularly important to the Western Pacific because of the smaller proportion of productive territory along its line. Its westbound transcontinental traffic declined from 166,209 tons during the six months ending March 31, 1917, to 96,383 tons during the corresponding period ending March 31, 1923. The Chicago, Milwaukee & St. Paul increased its revenue tons 4.3 per cent in 1922 over 1919, but due to loss of transcontinental traffic the tons handled 1 mile in 1922 were only 92 per cent of those in 1919. The transcontinental lines in the Northwest are said to be in the most critical period of their existence. Several of the principal lines engaged in handling this traffic at the time of the hearings were apparently falling far short of earning the fair return contemplated by law. The earnings of the Class I carriers in the western district as a whole averaged only 3.75 per cent on an annual basis during the nine months ended September 30, 1923, based on the property investment claimed by them, and but 4.35 per cent on the tentative valuation used by us in authorizing the general increases of 1920 plus subsequent additions.

The effect of the tremendous increase in the water competition has not been confined to the rail lines. Industries in the Middle West, which had built up a substantial business on the Pacific coast, have found this business rapidly declining because of the lower rates under which their competitors on or nearer the Atlantic coast may ship by water or rail and water. Some of these industries have been forced to establish or use factories farther east to supply their Pacific coast trade. Others have retained some of their trade on the coast by sacrificing profits. Only a few examples of the losses suffered by the Middle West need be given here. All-rail shipments of iron and steel articles from Group D to the Pacific coast terminals during the months of June, July, and August declined from 34,200 tons in 1920 to 11,496 tons in 1921 and 5,030 tons in 1923. A structural-steel company at Kansas City, Mo., which shipped 7,900 tons to Pacific coast points in 1914, 1915, and 1916, shipped approximately 1,400 tons in 1921, 1922, and 1923.

The canal competition has been felt and business on the coast lost by a manufacturer of iron and steel as far west as Minnequa, Colo. A Wisconsin paper company which shipped 1,531 tons to the Pacific coast in 1920 shipped only 242 tons in 1922 and 174 tons in 1923. A paint manufacturer at Duluth, Minn., has been forced to buy from an eastern factory to supply its Pacific coast branches. A manufacturer of roofing at Minneapolis, Minn., had a good business on the coast several years ago, but was compelled to abandon the territory on account of the canal competition. Other industries in the Middle West have lost a great deal of their Pacific coast trade to eastern competitors.

Much of the traffic which still moves from Chicago and other points in the Middle West to the Pacific coast is now routed east to Atlantic ports or south to Gulf ports and thence by water. For example, 89.3 per cent of the total of 27,206 tons of iron and steel articles shipped by seven concerns in Group D to the Pacific coast in 1922 moved by water, mainly by barge to New Orleans, La. In 1920 no paper was shipped from the Wisconsin mills to the Atlantic ports for transshipment to the Pacific coast by boat; in 1921 there was one small shipment of about 6 tons; in 1922 they shipped about 420 tons that way; and in 1923 such shipments amounted to 1,812 tons. A large manufacturer of pipe and pipe fittings at Chicago, which also had a factory to supply the eastern part of the country at Bridgeport, Conn., shipped all of its Pacific coast tonnage by rail from Chicago in 1920; in 1921 it shipped 81 per cent of such tonnage by rail from Chicago and 19 per cent by water from Bridgeport; in 1922 it shipped 60 per cent from Chicago and 40 per cent from Bridgeport; but 88 per cent of the tonnage from Chicago, as well as all of that from Bridgeport, moved by water; and during the first eight months of 1923 it shipped 48 per cent from Chicago and 52 per cent from Bridgeport, but only 6.3 per cent of the total tonnage from both plants moved all rail from Chicago and 93.7 per cent moved via the canal.

BALANCE OF TRAFFIC—EMPTY CARS

The majority report barely mentions the westbound empty-car movement, which is one of the important features of the case. The eastbound traffic of the transcontinental lines is very much heavier than their westbound traffic, and there is a large movement of empty cars westbound. From July, 1921, to October, 1923, inclusive, the Chicago, Milwaukee & St. Paul hauled past Avery, Idaho, 112,529 loaded cars, weighing 5,037,676 gross tons, eastbound, as compared with 42,432 loaded cars, weighing 1,755,779 gross tons, westbound. During the same period it hauled 78,054 empty cars westbound through Avery, or 184 per cent of the westbound loaded cars, and the eastbound empty movement was 7,063 cars, or 6.28 per cent of the eastbound loads. More than three-fourths of the empties moving westbound were box cars. The percentage of empty to loaded cars on the entire system in both directions averaged 25.5 per cent in 1917, 28.75 per cent in 1918, 33.25 per cent in 1922, and 35.25 per cent during the first eight months of 1923.

From January 1, 1922, to October 31, 1923, the Great Northern hauled past Troy, Mont., 122,094 loaded cars eastbound, as compared with 50,152 westbound. During the same period it hauled 80,704 empty cars westbound through Troy and 5,088 eastbound. The percentage of empties to loaded cars moving westbound was 122.3 per cent in 1922 and 203.5 per cent during the first 10 months of 1923. The corresponding percentages eastbound were 5.1 and 3.4, respectively. A similar showing was made as to cars passing Williston, N. Dak., and Leavenworth, Wash. During the first 10 months of 1923 the Northern Pacific delivered from one division to another at Mandan, N. Dak., 85,372 loaded cars eastbound, as compared with 40,864 westbound. The empty cars numbered 52,974 westbound and 2,662 eastbound. A similar showing was made as to the other division points on this line. During the period last mentioned the Chicago, Burlington & Quincy received from the Great Northern and Northern Pacific at St. Paul, Minn., and Billings, Mont., 86,874 loaded cars, and delivered to them 68,793 such cars. The empty cars delivered by it at those gateways numbered 77,321 and those received 37,786, but most of the latter appear to have been coal cars. The bulk of the empties moving westbound over these three lines were box cars.

On the Union Pacific system the eastbound traffic was also much in excess of that westbound during the first 10 months of 1923, except on its line between Los Angeles and Salt Lake City. During that period the Union Pacific delivered to the Oregon Short Line at Granger, Wyo., an average of 50 empty box cars per day, and the Oregon Short Line delivered to the Oregon-Washington at Huntington, Oreg., an average of 69 empty box cars per day. From October 1, 1916, to March 31, 1917, the Western Pacific forwarded 199,957 tons of transcontinental traffic eastbound and received 166,209 tons of such traffic westbound. During the same months in 1922–23 it handled 164,768 tons eastbound and but 96,383 tons westbound.

The Atchison, Topeka & Santa Fe's eastbound traffic greatly exceeded its westbound traffic during the first 10 months of 1923. Its westbound empty movement consisted mainly of refrigerator cars, in which some commodities may not be loaded, but it was testified that more than two-thirds of the items in the application could be loaded in them.

From July, 1921, to October, 1923, inclusive, 90,983 empty cars moved westbound through Belen, N. Mex., and 85,200 through Seligman, Ariz., which were 74.5 and 81.3 per cent of the loaded cars moving westbound through those points, respectively. In the other direction the empty cars were 23.3 per cent of the loaded cars moving eastbound through Seligman and 16.2 per cent through Belen. In order to handle its eastbound tonnage this line is obliged to "deadhead" engines and crews westbound. During the first 10 months of 1923, 436 engines were so handled on the division immediately west of Belen, 487 engines on the next division, and 210 engines on the next division. Between Chicago and Wellington, Kans., an average of a little less than one crew per day was deadheaded westbound.

During the first 10 months of 1923 the Southern Pacific handled between Sparks, Nev., and Ogden, Utah, 1,142,859,093 net tons per mile eastbound and 462,897,341 westbound, the latter being 41 per cent of the former. Between El Paso, Tex., and Yuma, Ariz., the corresponding figures were 894,998,581 net-ton miles eastbound and 475,489,955 westbound, or 53 per cent of the eastbound tonnage. During the same period 88,303 empty cars passed Ogden and Yuma westbound, which was 96.6 per cent of the westbound loaded cars passing those points. As on the Atchison, Topeka & Santa Fe, the bulk of these empties were refrigerator cars. The potential hauling capacity of the locomotives on both of the above-mentioned lines of the Southern Pacific is greater westbound than eastbound. The engine efficiency attained between Ogden and Sparks westbound was 20 per cent of potential capacity on the net-ton mile basis and 72 per cent on the gross-ton mile basis compared with 41 and 91 per cent, respectively, eastbound. Between El Paso and Yuma the corresponding percentages were 22 and 87 westbound compared with 42 and 96 eastbound.

On some lines the westbound tonnage preponderates at certain seasons of the year, but the average throughout the year is generally very much in favor of the eastbound traffic. The average westbound empty haul of all the Class I carriers in the western district increased from 36.9 per cent of the total westbound movement during the first 10 months of 1920 to 44.8 per cent during the same months of 1923. The corresponding averages in the case of eastbound traffic were 23.2 per cent in the first-mentioned period and 22.9 per cent in the latter period.

As reported by the United States Shipping Board in long tons and converted into tons of 2,000 pounds, the eastbound intercoastal traffic carried through the Panama Canal during the year 1923 amounted to 2,431,559 tons of general cargo, exclusive of oil in tank ships, and 3,095,712 tons westbound, or an excess of 664,153 tons westbound over eastbound.

ATTITUDE OF THE VARIOUS PARTIES

The majority report refers to the attitude of the various parties to some extent, but it does not show their views sufficiently, especially those supporting the application.

The applicant carriers take the position that in view of the great amount of traffic which has been taken from them by the water lines, the large number of empty cars moving westbound which could be hauled under load at but little additional expense, and the need for increased revenues by some if not all of the carriers, it is not only their right but their duty to seek to regain some of this traffic by making rates that will enable the Middle West to compete with eastern manufacturers on the Pacific coast. Applicants urge that it would be unfair to tie their hands by denying relief so they can not meet the competition of the water lines, and that unless relief is granted the water lines will obtain a practical monopoly of all the traffic which they are capable of handling to the Pacific coast.

The application is supported by numerous chambers of commerce, shippers' organizations, and individual shippers throughout the Middle West, who urge that it is a waste of transportation to have to ship their products 800 or 900 miles east or south in order that they may move west to the Pacific coast, and they take the position that the proposed rates are essential in order to permit them to continue their business on the Pacific coast in competition with eastern manufacturers shipping through the canal.

The Pacific coast ports of San Francisco and Oakland, Calif., Portland, Oreg., Seattle and Tacoma, Wash., through their chambers of

commerce and numerous witnesses, favor the granting of fourth-section relief to the rail carrier in order that the latter may meet the water competition at the ports. They take the position that as they already have the benefit of the low-water rates from the East, upon which the bulk of their traffic is now moving, the proposed rates would merely increase their choice of markets and allow them to ship by either rail or water at rates that are approximately equal after allowing for the difference in service and all other elements that should be considered.

The application is also supported by the lumber industry of the Pacific coast, including the Inland Empire and other parts of intermountain territory; the apple and fruit growers of the Yakima Valley in Washington and the Hood River district in Oregon; the North Pacific Millers' Association, representing 66 flour mills in Washington, Oregon, and Idaho; the largest copper interests with mines and smelters in Montana, Utah, Nevada, California, Arizona, and New Mexico; and other industries which ship their products from the far West to the East. They favor the granting of relief to the carriers because the heavy westbound empty-car movement is a burden on their eastbound traffic; they must have low rates on their products in order that they may move to eastern markets in competition with nearer sources of supply in many cases; and they hope that the increased revenue of the carriers will make possible some needed reductions in their rates or at least prevent an increase in such rates. They also believe that to the extent the westbound loaded movement is increased it will help their eastbound car supply, particularly in periods of car shortage. Some of these industries located in intermountain districts introduced evidence to show that their prosperity is more important to the community than that of the jobbers.

As in the case of all the previous applications referred to herein, the jobbing and some of the manufacturing interests of the intermountain territory vigorously object to the proposed reductions to the Pacific coast ports unless they are also applied to intermediate points. In this they are supported by the State commissions of the intermountain territory and numerous commercial organizations in that territory. Also joined with them in this proceeding are similar interests in the San Joaquin Valley of California.

The other opponents of the application appear to be interested in preventing any reduction in the rail rates from the Middle West to the Pacific coast, and they do not care particularly whether higher rates are maintained at intermediate points; in fact, it would be to their advantage if the proposed rates were confined to the ports rather than extended to the intermediate territory.

WATER COMPETITION OR MARKET COMPETITION

The majority report refers to the contention of the eastern manufacturers that the relief sought is based on market competition rather than water competition and that such competition is not sufficient ground for fourth-section relief. Later the report states that the relief sought is based primarily on market competition, but it does not definitely pass upon the question of whether such competition is sufficient ground for fourth-section relief, although an inference might be drawn from the denial of relief.

Applicants say that the proposed rates are for the purpose of meeting water competition, since it is the competition of the water lines which is the controlling element in the making of such rates; but they think it is immaterial whether it is described as water competition or market competition, since the form of competition under consideration has been held to be a proper ground for relief from the fourth section.

In one of the early cases under the fourth section the question arose whether the rates on hay from Memphis, Tenn., to Charleston, S. C., might be lower than to an intermediate point, because of competition with water or rail-and-water routes from Chicago to Charleston. We held that "Water competition, to justify lower long-haul rates, must exist between the point of shipment and the longer distance point of destination." H. W. Behlmer *v.* M. & C. R. Co. (6 I. C. C. 257, 264). The case was carried to the Supreme Court, which, after reviewing the decisions of the lower courts in that case and its own decisions in other cases, overruled our conclusion. Louisville, etc., Railroad Co. *v.* Behlmer (175 U. S. 648). The court said, at page 669:

"It is then settled that the construction given in this cause by the Interstate Commerce Commission and the circuit court of appeals to the fourth section of the act to regulate commerce was erroneous, and hence that both the Interstate Commerce Commission and the circuit court of appeals mistakingly considered, as a matter of law, that competition, however material, arising from carriers who were subject to the act to regulate commerce could not be taken into consideration, and likewise that all competition, however substantial, not originating at the initial point of the traffic was equally, as a matter of law, excluded from view."

The above case was decided prior to the amendment of the fourth section in 1910, which amendment, however, stated no new rule or principle, but simply shifted the power of deciding whether the circumstances and conditions justified an exception to the fourth section from the carriers and vested it in the commission as a primary instead of a reviewing function. Intermountain Rate Cases, supra, page 485. Since the Supreme Court's decision in the Behlmer case we have never held that competition with carriers operating from other markets may not be considered as a ground for relief from the fourth section, and we have granted relief on that ground in a number of cases decided since the 1910 amendment.

In City of Spokane *v.* N. P. Ry. Co., supra, complainants contended that even though the water competition justified lower rates from New York to Seattle than to Spokane, there was no such competition and the relief should not apply from Chicago and other points in the interior. In overruling that contention and ruling that market competition should be taken into consideration we said, at pages 414, 423:

"Strictly speaking, there is no such thing as market competition which is distinct from competition between the lines of transportation serving the market. A market can only compete through the agency which transports for it. The carrier makes a rate from a given market, not out of favor to that locality, but because it desires to obtain traffic which will not otherwise come to it. There would seem, therefore, to be little distinction between the competition of markets and the competition of rival railroads. The whole situation must be considered by us in passing upon these applications.

* * * * * * *

"Considering this question broadly and in all its aspects we can not say that the legitimate effect of water competition upon the Atlantic seaboard may not be to reduce the rail rate from interior points."

In sustaining our decision in the case last referred to, granting fourth-section relief with respect to rates from points east of the Missouri River to the Pacific coast, the Supreme Court said in Intermountain Rate Cases, supra, at page 483:

"We observe, moreover, that in addition it came to be settled that where competitive conditions authorized carriers to lower their rates to a particular place, the right to meet the competition by lowering rates to such place was not confined to shipments made from the point of origin of the competition, but empowered all carriers in the interest of freedom of commerce and to afford enlarged opportunity to shippers to accept, if they chose to do so, shipments to such competitive points at lower rates than their general tariff rates; a right which came aptly to be described as "market competition" because the practice served to enlarge markets and develop the freedom of traffic and intercourse."

In Fourth Section Violations in the Southeast (30 I. C. C. 153), we distinguished the competition of carriers serving different origin markets of supply from the competition of destination markets of distribution, which later was held to be no justification for departing from the fourth section, and said at page 279:

"The competition of carriers serving other markets of supply does constitute in our opinion a justification in some instances for making lower rates to more distant than to intermediate points, when it is found—

"First, that the route from one market is under a material disadvantage as against that from another,

"Second, that the line seeking relief is meeting consistently at all points the competition against which relief is sought."

In corporation Commission of New Mexico *v.* Ry. Co. (34 I. C. C. 292, 301), we authorized the carriers to maintain rates from Kansas City, St. Louis, Mo., and Chicago to El Paso, Tex., lower than their rates to intermediate points, in order to meet the rates available from New York and other points on the Atlantic seaboard by water and rail via Galveston, Tex. In Grand Rapids Plaster Co. *v.* Director General (41 I. C. C. 1) we said that it is well established that we may consider market competition in passing upon applications under the fourth section, and relief was granted upon that ground.

On April 7, 1924, we authorized the establishment of rates from Portland, Seattle, and Tacoma to certain points on Grays Harbor and Willapa Bay in Washington, lower than the rates to intermediate points, in order to meet the competition of boats operating from San Francisco. Rates to Grays Harbor and Willapa Bay Points (88 I. C. C. 512). That market competition may be ground for relief from the long-and-short-haul rule was also recognized in Fourth Section order No. 8900 (88 I. C. C. 765), entered March 4, 1924.

ARE PROPOSED RATES REASONABLY COMPENSATORY

The report proposed by the attorney examiner, who recommended that the application be denied, found that the proposed rates generally complied with each of the essentials of a reasonably compensatory rate as defined in Transcontinental Case of 1922, supra, but the final report merely finds that the proposed rates are not any lower than necessary to meet the competition, except on ammunition, and no finding is made as to whether they comply with the other three essentials.

Operating officials of the transcontinental lines testified that, as a practical matter, a large amout of additional traffic could be handled westbound in the cars now moving empty, without increasing the train-miles, and that the additional expense of handling such traffic would be relatively small. For example, it was estimated that during the first 10 months of 1923 an average of 1,427 additional tons per day could have been handled westbound on the Great Northern without requiring any additional train-miles or train crews; and

that the Northern Pacific could have handled a total of 500,000 more tons during that period without using more than 88 per cent of its westbound power. Likewise, it was estimated that during the same period the Atchison, Topeka & Santa Fe could have handled 300,000 more tons westbound in its empty refrigerator cars without appreciable increase in expense, and that the Southern Pacific could have handled an average of 3,500 additional tons per day westbound without increasing car-miles or trains-miles. It was suggested by some of the parties that trains are held until tonnage is available to fill them up, but these operating officials testified that such is not the practice in the case of westbound traffic, since the power has to be brought back to move the eastbound tonnage whether or not there is anything for it to haul westbound.

Applicants' cost data indicate that the proposed rates exceed the out-of-pocket cost by at least 24 to 36 cents per 100 pounds. Although the computation of these costs necessarily required various assumptions not susceptible of accurate determination, the carriers' figures are not seriously disputed by any of the other parties of record. The Intermediate Rate Association agrees with applicants that the evidence shows that the proposed rates "cover and more than cover the extra or additional expenses incurred in handling the traffic to which they apply."

Applicants undertook to supply the information as to collateral losses of revenue which was found lacking in the last proceeding. They first showed that during May, June, July, and August, 1923, the traffic moving by rail from the origin territory to the Pacific ports and points to which the port combinations would reduce the present rates amounted to 85,753 tons of iron and steel articles, 11,711 tons of paper and articles of paper, and 10,011 tons of the other commodities in the application. They next figured that the reduction in revenue on this traffic under the proposed rates would amount to $207,530.94 on the iron and steel articles, $38,285.60 on the paper articles, and $41,334.50 on the other commodities. Using the cost ratio of 49.5 per cent, referred to in the majority report, and a 25 per cent empty haul, they then estimate that it would require 23,143 additional tons of iron and steel, 4,034 tons of paper, and 3,862 tons of the other commodities to offset the loss on the traffic that moved during the period mentioned. Converting these figures to a yearly basis, the additional traffic necessary to equalize the reductions on traffic that might move anyhow would be about 69,000 tons of iron and steel, 12,000 tons of paper, and 11,500 tons of the other commodities. The total amount is approximately 5 per cent of the tonnage of these commodities that moved westbound through the canal in 1923.

Traffic officials of the transcontinental lines testified that, after investigating the matter, it is their judgment that the proposed rates would attract additional tonnage sufficient to more than offset the reductions on traffic that might move anyhow; otherwise, they would not have proposed these rates. This testimony was corroborated by witnesses for many shippers in the Middle West, including the independent iron and steel industry in the Chicago district and the paper industry of Wisconsin, who testified that they believed the shippers would be able to materially increase their shipments under the proposed rates. The only exception was the United States Steel Corporation, which operates its own ships through the canal and moves the bulk of its Pacific coast tonnage by rail and water from the Pittsburgh (Pa.) district. One independent steel company with plants at Indiana Harbor, Ind., Chicago Heights, Ill., and Milwaukee, Wis., which had not been able to ship to the Pacific coast for two years prior to the hearing, stated that it should be able to ship 50,000 to 75,000 tons per year to the coast. There are several other independent iron and steel companies in the Chicago district, and a large one in Colorado stated that the proposed rates would enable it to regain some of the traffic it has lost on the Pacific coast. Wisconsin paper manufacturers testified that they would be able to increase their shipments by more than the amount necessary to equalize the reduction on existing traffic. Other industries in the Middle West expect to regain at least part of the business they have lost to eastern manufacturers. The intercoastal lines agree with applicants that the proposed rates would attract a substantial portion of the traffic now moving by water.

The witnesses referred to are the persons who are in a position to know most about the amount of additional traffic that may be expected to move under the proposed rates, and their judgment is confirmed by the fact that the rail lines carried a much greater proportion of the Pacific coast traffic when they had fourth-section relief. It is as certain, therefore, as the fact ever can be in a case of this kind that the proposed rates would attract additional traffic sufficient to more than offset the loss on existing traffic and increase the net revenue of the western lines. It necessarily follows that they would not impose an undue burden on other traffic, but would instead lessen the burden now borne by other traffic, and they would aid rather than jeopardize the appropriate return on the value of the property of the western lines.

The effect of the proposed rates on the eastern lines is not considered of controlling importance by applicants, who point out that they are much more vitally interested than the former in this problem of water competition. But viewing the matter from the standpoint of all the railroads, they urge that the proposed rates would increase the net revenues of all the lines considered as a whole. For example, it is pointed out that the margin of profit under the proposed rate of 80 cents on iron and steel articles, minimum 80,000 pounds, which is shown to range from 35.57 to 46.28 cents per 100 pounds, is greater than the local rate of 31 cents from Pittsburgh to Baltimore, Md., and of course the latter rate is not all clear profit. In the case of paper and most of the other commodities the local rates to the eastern ports are generally lower than on iron and steel from Pittsburgh. The diversion of Pacific coast traffic from the all-rail routes to rail-and-water routes via eastern ports has apparently increased the preponderance of traffic, eastbound over westbound, on the eastern lines as well as the western lines. The record indicates that the eastern lines are generally in a more prosperous condition than the western lines.

If the proposed rates were applied to intermediate territory as well as to the Pacific coast, the reduction of the carriers' revenues on existing traffic would be very much greater than if they were confined to the ports. This is shown by the fact that the traffic which would be affected by the proposed rates during the months of May, June, July, and August, 1923, amounted to about 40,000 tons to the terminals as compared with about 190,000 tons to the terminals and part of the intermediate territory. The port combinations would reduce the rates on a large tonnage to some intermediate points, but of course the application of the terminal rates to such points would effect a much greater reduction. It is not expected that the loss which would result on traffic to the intermediate territory not affected by the port combinations could be offset by an increase in the tonnage to that territory.

The intercoastal lines express apprehension that the proposed rates might destroy the steamship lines, but they also point out that the commodities in the application only include about one-half of the westbound tonnage of the steamships, they intimate that the railroads can not hope to take any of the traffic originating at the Atlantic ports, and they say that the rail lines can hardly expect to get more than one-half of the westbound tonnage of the commodities in the application.

It is unnecessary to repeat here the figures already quoted regarding the remarkable increase in the tonnage of iron and steel articles moving by the water lines, the corresponding decline in shipments by the rail lines to the Pacific ports, and the relationship of the rail tonnage to the water tonnage during various periods. It is sufficient to say that they indicate that the rail lines could increase their tonnage of these articles by more than 200 per cent of the tonnage handled by them to the Pacific coast and back-haul territory in 1923, or over twice the amount necessary to offset their loss on existing traffic, without taking more than one-half of the total tonnage by both the rail and water routes, and the water lines would still have about three times as much tonnage as they had in 1921, when the hearings were held on the last application.

The paper items in the application do not include all of the paper articles that move westbound through the canal. Some of the paper articles covered by the application do not appear to move in large volume either by rail or water, but they are generally grouped with or take the same rates as other articles which do move in considerable volume. The amount of additional tonnage necessary to equalize the proposed reductions on the existing paper traffic of the rail lines appears to be less than the increase in the canal tonnage in one year from 1922 to 1923, and apparently the rail lines could regain considerably more than that amount without taking over one-half of the total tonnage by both rail and water.

The canal tonnage of the other commodities covered by the application generally exceeded and in some cases was several times as much as the rail tonnage to the Pacific coast and back-haul territory during the six months from June to November, 1923. The estimated amount of additional tonnage of the other commodities necessary to equalize the proposed reductions on the existing traffic of the rail lines is about one-ninth of the total tonnage of those commodities handled by the canal lines in 1923.

The rail lines could regain over 600,000 tons of the commodities in the application without taking more than the excess of the westbound tonnage over the eastbound tonnage of general cargo passing through the canal in 1923, or more than one-half of the total tonnage of these commodities moving by both rail and water to the Pacific coast, and the water lines would still have a great deal more tonnage than they had when the hearings were held on the 1921 application.

There does not appear to be any reason to fear that the ship lines would be destroyed.

REASONABLENESS OF RATES TO INTERMEDIATE POINTS

The majority report refers to the contention of the intermountain interests that if the proposed rates would be reasonably compensatory for the haul to the Pacific coast, they would be fully compensatory if applied at intermediate points, but it does not decide the question. Neither does the report find whether the present

rates to the intermediate territory are reasonable or unreasonable, which has always been considered one of the fundamental questions in cases of this kind.

Applicants show that the present rates to the intermediate territory are as low or lower than the rates prescribed from Chicago to Utah common points in Commodity Rates to Salt Lake City, Utah (32 I. C. C. 551), as modified by the general increases of 1918 and 1920 and reduction of 1922; also as low or lower than the rates established to the Pacific coast and intermediate territory on March 15, 1918, under the authority granted in Transcontinental Commodity Rates, supra, as modified by the general increases and reduction; and as low or lower than the rates found not unreasonable in Intermediate Rate Asso. *v.* Director General, supra, as modified by the general reduction of 1922. The present rates are lower than those authorized and found not unreasonable in the last two of the above cases, as modified by the subsequent general changes, on every commodity covered by the application, except dry goods, and on that item the rates are the same as under those cases. The differences in favor of the present rates on the other commodities range all the way from 1 to 88 cents. This is apparently the result of reductions made in the rates to the Pacific ports, because of the canal competition, which had to be extended to intermediate points in the absence of fourth-section relief.

Upon this record we would not be justified in overruling our previous decisions approving rates that would now be as high and in most cases considerably higher than the present rates to intermediate points.

WOULD PROPOSED ADJUSTMENT CREATE UNDUE PREJUDICE?

The majority report states that before relief may be granted we must be satisfied that the same will not violate other sections of the act, particularly section 3 prohibiting undue or unreasonable preference or advantage and undue or unreasonable prejudice or disadvantage. But while the report states that the proposed rates would afford the Middle West certain advantages and be prejudicial to the intermountain territory, it does not find that such advantages and prejudice would be undue or unreasonable, which is necessary in order to constitute a violation of section 3. Interstate Com. Commis. *v.* B. & O. Railroad (145 U. S. 263, 276).

The report states that the proposed rates from the Middle West would neutralize the natural advantage of location possessed by Pittsburgh and other points nearer the Atlantic seaboard and accord the Middle West an advantage to which it is not legitimately entitled. In other words, the thought seems to be that it is improper for the western carriers to make all-rail rates from the Middle West on a competitive basis with those available by water, or rail and water, from the East. This means in effect that the eastern manufacturers and the water lines are entitled to a virtual monopoly of the Pacific coast trade in these important commodities.

Points on or near the Atlantic seaboard can not be deprived of the benefit of their location with respect to water transportation so long as that form of transportation exists, but I do not concede that their location gives them any exclusive right to the Pacific coast trade. An adjustment which will permit of competition between the manufacturers of the Middle West and the East on the Pacific coast would encourage a wholesome distribution of industry, alleviate congestion of traffic at New York and other eastern ports, and be otherwise in the general public interest. Although we do not ordinarily require the carriers to make rates to meet such competitive conditions, it is well settled that they may do so voluntarily if the rates are reasonably compensatory and create no undue prejudice or preference. See Reduced Commodity Rates to Pacific Coast (89 I. C. C. 512).

How can there be any undue prejudice or preference in the relationship of the proposed all-rail rates from the Middle West and the water or rail-and-water rates from the East, which are maintained by entirely different sets of carriers, even if such relationship was shown to be improper and we had jurisdiction over it under section 3?

It is said that the proposed rates would also increase the advantage of the Middle West in respect of traffic moving all rail from the East. Inasmuch as the bulk of the traffic in these commodities from Pittsburgh and east is shown to be moving by the water or rail-and-water routes, the relationship of the all-rail rates is not of such great importance. The present differentials in the all-rail rates from Groups A, B, and C over Group D are very low. For example, the differential of 27.5 cents on dry goods from New York over Chicago is less than 15 per cent of the rate of $1.875 from New York to the Pacific coast, whereas the eastern lines receive 27.5 per cent of that rate, or 51.5 cents, for the haul from New York to Chicago. In other words, the eastern lines' division in the joint rate is almost double the differential from New York over Chicago. In Intermediate Rate Asso. *v.* Director General (61 I. C. C. 226, 242) we said that traffic and transportation conditions would furnish justification for increasing these differentials.

But the relief sought could be granted upon condition that the all-rail rates from the groups east of Group D shall be reduced to the same extent as those from that group, or if the eastern lines should be unwilling to join in such rates, upon condition that the western lines establish proportional rates from the gateways with the eastern lines, applicable on traffic from points on those lines, which shall be lower than the western lines' present proportions of the joint through rates by the amount of the reduction in the local rates from the gateways. For example, upon iron and steel articles now taking a rate of $1 from Group D, which it is proposed to reduce to 80 cents, the western lines would be required to establish proportional rates 20 cents lower than their present divisions of the joint rates, which would amount to 74.5 cents, 76 cents, and 74 cents on traffic from points in Groups A, B, and C, respectively.

Such proportional rates would in all cases materially exceed the out-of-pocket costs of handling additional traffic, as shown by the record, and there would be very little more loss on existing traffic, which is now moving mainly by water or rail and water from Pittsburgh and east. While the present spreads between Groups D and C would be increased slightly, such rates would place Group C industries shipping by rail on a nearer equality with those in Groups A and B shipping by water or rail and water. For example, while the spread on iron and steel articles now taking a rate of $1 from Group D and $1.08 from Group C would be increased 4.5 cents, the rate from Group C would be reduced 15.5 cents, which would materially assist the industries of that group in competing with their principal competitors in the Pittsburgh district.

The statement that the proposed rates would be prejudicial to the intermountain territory is based mainly on the testimony of the intermountain jobbers, who contend that such rates would circumscribe their distributing territory, because they would enable the coast dealers to reduce their prices in the competitive territory. If that should be the result, it would seem that the proposed rates would be an advantage rather than a disadvantage to the consumers in that territory.

But it is not certain that the proposed rates would enable the coast dealers to sell any more cheaply than at present. As the bulk of their traffic in the commodities covered by the application appears to be moving by water, it would seem that the coast dealers are at least in a position to base their prices on the water or rail-and-water rates, which are generally as low as or lower than the proposed rates. This is probably true even as to traffic now moving from the origin territory to the Pacific coast by rail, as the record indicates that the manufacturers of the Middle West must meet the competition of the eastern manufacturers shipping by water in order to do any business on the coast. In other words, the manufacturer of the Middle West must make a price to the coast dealer which, plus the all-rail rate, will not exceed the price at which similar goods can be purchased in the East plus the water or rail-and-water rate. This is particularly true as to iron and steel articles upon which the Pittsburgh prices are the controlling factor in other markets.

The proposed rates would afford the Pacific coast ports the privilege of shipping by rail or water and a wider choice of origin markets at rates approximately equal, after allowing for all incidental charges and difference in service. These are undoubtedly advantages, but it does not necessarily follow that the intermountain cities would be subjected to undue prejudice. It is not every discrimination which is unjust or undue, and in deciding questions of this kind it is proper to consider the interests of the applicant carriers, that section of the country embraced in the origin territory, and last but not least, the producers of the Pacific coast and intermountain territory who testified in support of the application, as well as those of the jobbers and others. See Texas & Pacific Railway *v.* Interstate Commerce Commission (162 U. S. 197, 218).

In view of the low water or rail-and-water rates already available from the East to the Pacific coast ports and the influence they necessarily have on the prices which the Middle West shippers must make to the coast dealers, any disadvantage which might be suffered by the intermountain jobbers from the proposed rates seems slight compared with the benefits which would accrue to the other parties mentioned. The record indicates that the proposed rates would afford the western carriers a much-needed increase in their westbound tonnage and net revenues, enable the Middle West to prosper in competition with the East on approximately equal rates to the Pacific coast, and relieve the burden on other traffic, particularly that produced in the far West and shipped East. We could not find undue prejudice to the intermountain cities without overruling our previous decisions granting relief from the fourth section. In East Tenn., etc., R. Co. *v.* Interstate Com. Comm. (181 U. S. 1), the Supreme Court said, at page 18:

"In a supposed case when * * * it is conceded or established that the rates charged to the shorter distance point are just and reasonable in and of themselves, and it is also shown that the lesser rate charged for the longer haul is not wholly unremunerative and has been forced upon the carriers by competition at the longer distance point, it must result that a discrimination springing alone from a disparity in rates can not be held, in legal effect, to be the voluntary act of the defendant carriers, and as a consequence the provisions of

the third section of the act forbidding the making or giving of an undue or unreasonable preference or advantage will not apply."

RAILROADS VERSUS SHIPS

The majority report refers to the fact that the additional traffic which might be gained by the rail lines would be taken from the ships. The record indicates, however, that it would be largely traffic which has been diverted from the rail lines to the ships during the last few years. If the railroads are not permitted to make rates which will enable them to compete with the water lines, the latter will make still further inroads on the traffic of the rail lines until the ships obtain a virtual monopoly of all the traffic which they are in a position to handle. Section 500 of the transportation act, 1920, declares the policy of Congress "to foster and preserve in full vigor both rail and water transportation," and I do not believe it was intended that either the rail or water lines should be given a monopoly of traffic which both may handle. If such had been the intention of Congress, it would not have continued our authority to grant relief from the fourth section because of water competition.

The transcontinental railroads represent a very large investment in property which can not be removed and used elsewhere, if traffic diminishes, as in the case of the steamships. They are required by law to publish their rates and can not charge less as do the water lines. We are charged with a duty respecting the revenues of the railroads by section 15a but do not have any such responsibility regarding the ships. The railroads should not be authorized to charge rates which will threaten the extinction of legitimate water competition, but the record in this proceeding does not show that the proposed rates would be apt to have such an effect.

On the contrary, it indicates that the proposed rates would not attract much, if any, traffic now originating at the ports. But the western lines could haul more than double the tonnage of these commodities handled by them to the Pacific coast and back-haul territory in 1923, an increase more than four times the estimated amount of additional tonnage necessary to equalize their loss on existing traffic, without taking over one-half of the total tonnage of these commodities by both rail and water, and without reducing the westbound tonnage of the water lines by more than the excess of their westbound tonnage over the eastbound tonnage of general cargo in 1923.

It is suggested that the granting of the application might cause corresponding reductions in the water or rail-and-water rates, but the witness for the water lines testified that they could not afford to reduce their existing rates in view of operating costs, and it is improbable that the rail lines would reduce their rates to the eastern ports, as they would lose more than they would gain. For example, the rate of 31 cents on iron and steel articles from Pittsburgh to Baltimore would have to be reduced to about one-third of that amount to equalize the reductions in the transcontinental rates. And this or any other reduced rate to the ports would apply on the heavy tonnage now moving through Baltimore and other eastern ports, a large proportion of which would no doubt continue to move through such ports without any reduction. The water lines also would stand to lose more than they would gain by reducing their rates, because such reductions would apply on the large volume of traffic now handled by them, and most of this traffic would probably continue to move by water anyhow. In this respect the eastern lines and the water lines are differently situated from the western lines, which are now handling a relatively small proportion of the iron and steel articles and the total tonnage of all the commodities in the application to the Pacific coast. Moreover, the granting of fourth-section relief does not appear to have caused reductions in the water or rail-and-water rates in the past.

It may be that the rail and water lines should be subject to the jurisdiction of the same regulatory body, as suggested by Commissioners Lewis and Woodlock, but the rail lines would still need fourth-section relief to meet any rates which would be reasonable for the water lines, and the granting of relief to the rail lines should not be postponed pending such legislation.

FOURTH-SECTION DEPARTURES FROM POINTS EAST OF CHICAGO

The majority report refers to the contention of the intermountain interests that the proposed rates would create fourth-section departures not covered by the application, and later it mentions certain joint through rates from points east of Chicago, which would be reduced by the Chicago combination to the Pacific coast to a lower level than the through rates to intermediate points. The report states that these departures are not asked by the eastern lines, but it does not decide whether they are covered by the application.

The application asks authority to establish rates from Chicago to the Pacific coast lower than the rates to intermediate points, and authority to establish the proposed rates would cover their use as factors of combination rates as well as local rates. There are numerous situations of this kind throughout the country, as in the case of rates made by combination on the Ohio River, and where the departures are due to the factors south of the river it has never been considered necessary for the lines north of the river to join in the application. In Rates to Gulf Ports for Export (44 I. C. C. 543) we denied a petition by the northern lines to rescind a fourth-section order issued upon the application of the southern lines, which authorized factors south of the Ohio River resulting in combination rates lower to farther distant than to intermediate points. Moreover, we have often granted fourth-section relief after investigation, even though the carriers may not have applied for such relief, when it is apparent that the same will be necessary in connection with a rate adjustment prescribed by us. In this connection see United States *v.* Merchants, etc., Asso. (242 U. S. 178).

SUMMARY

The facts which stand out in greatest prominence in this case are as follows:

1. We granted fourth-section relief to the rail lines when the water competition was much less severe than at present, and in discontinuing the relief because of the temporary withdrawal of the ships from the intercoastal trade, we recognized the necessity for relief under normal conditions and invited the carriers to file an application when the water competition returned.

2. The tremendous increase in the water competition since the hearings on the 1921 application, and its effect upon the industries of the Middle West as well as the western railroads.

3. The extensive westbound movement of empty cars, which could be handled under load at but little additional expense.

4. The only parties who are really opposed to the maintenance of higher rates to intermediate points than to the ports and whose interest is not merely to prevent any reduction in the rates from the Middle West are the so-called intermountain interests, and some of the most important industries in the intermountain territory supported the application.

5. Whether the competition under consideration be called water competition or market competition, it is a proper ground for fourth-section relief as shown by the cases cited in this dissent.

6. The proposed rates with one exception comply with all of the essentials of a reasonably compensatory rate as defined in Transcontinental cases of 1922.

7. The rates to intermediate points are as low as or lower than the rates prescribed or approved in previous decisions, and we could not find them unreasonable upon this record.

8. The majority report does not, and could not, find that the proposed rates would create undue prejudice against either the intermountain jobbers or the eastern manufacturers, particularly if the relief were granted upon condition that proportional rates be established for application on traffic from points east of Group D upon the basis herein described.

9. Denial of the application will give the water lines a virtual monopoly of all the traffic which they are in a position to handle, which does not appear to be in harmony with section 500 of the transportation act.

10. The granting of the application would afford the western lines a much-needed increase in their westbound traffic and net revenues, enable the Middle West to prosper in competition with the East on approximately equal rates to the Pacific coast, and relieve the burden on other traffic, particularly that produced in the far West and shipped east.

It might reasonably be assumed that the rail carriers should regain one-half of the total Pacific coast tonnage of the commodities covered by the application, which they apparently had when the last application was decided, but if they should only increase their tonnage to the extent of the excess of the westbound tonnage of general cargo over the corresponding eastbound tonnage of the canal lines, such increase would have amounted to approximately 664,000 tons in 1923. The proposed rate of 80 cents on iron and steel articles, minimum 80,000 pounds, is about the lowest of the rates proposed from Group D; at least, it may safely be assumed that it is not in excess of the weighted average on all of the traffic covered by the application. The 664,000 additional tons at 80 cents per 100 pounds would increase the gross revenue of the western carriers more than $10,000,000 per year. Taking into consideration the out-of-pocket costs of handling such traffic, which are shown as from 33.72 to 44.43 cents per 100 pounds for an 80,000-pound carload from Group D, the increase in the net revenues of the western carriers would be from about $4,700,000 to $6,100,000 per year. After deducting for the loss on existing all-rail traffic, the net increase in revenues over and above the extra expense of handling the traffic would still be somewhere around $4,000,000 or $5,000,000 per year.

Such increased revenue would to that extent have relieved the burden resting upon the shipping public, which is now confronted by an application of the western lines for a general increase in their rates in order to enable them to earn the fair return contemplated by law.

The denial of the application by the majority under these circumstances savors of an arbitrary exercise of authority which we do not have under the statute as interpreted by the Supreme Court in the Intermountain Rate cases.

I am authorized to say that Commissioners Meyer and Aitchison join in this dissent.

Commissioner Hall did not participate in the disposition of this proceeding.

APPENDIX

Present and proposed all-rail rates on commodities included in fourth-section application, as amended, from Group D to San Francisco, Calif., and port-to-port rates on the same commodities

Item of application	Commodity	Present rail rates	Proposed rail rates	Port-to-port rates
2	Ammunition, etc	$1.40	$1.10	$0.65
4	Dry goods	1.58	1.10	.75
6	Iron and steel articles—bar, band, hoop, etc	1.00	.80	.40
7	Iron and steel articles—bands (pipe), rods (pipe), etc	1.20	.85	.45
8	Iron and steel articles—bands, shingle, ties, etc	1.00	.85	.45
9	Iron and steel articles—billets, blooms, etc	1.00	.80	.40
10	Iron and steel articles—bolts, nuts, etc	1.00	.80	.40
11	Iron and steel articles—horseshoes, etc	1.00	.80	.40
12	Iron and steel articles—castings and forgings, rough, etc	1.20	.90	.50
13	Iron and steel articles—plate and sheet iron, etc	1.00	.80	.40
14	Iron and steel articles—plate and sheet iron, etc	1.15	.90	.50
15	Iron and steel articles—pipe, wrought iron or steel (other than coils), etc	1.25	1.00	.45
16	Iron and steel articles—pipe, wrought iron or steel (other than coils), etc	1.00	.85	.45
17	Iron and steel articles—nails, spikes, fencing, etc	1.30	1.05	.55
18	Iron and steel articles—nails, spikes, etc	1.00	.80	.40
19	Iron and steel articles—pipe, cast iron, and connections for same	1.00	.85	.40
20	Iron and steel articles—pipe fittings and connections, wrought iron, etc	1.00	.85	.45
21	Iron and steel articles—structural iron and steel	1.25	1.00	.55
22	Soda alumina sulphate	1.20	1.00	.60
24	Packing-house products, lard and lard substitutes, etc	1.60	1.20	.50
25	Paint	1.25	1.00	.65
26	Paper and articles of paper—bags, wrapping, etc	1.25	1.00	.65
27	Paper and articles of paper—books, blank, writing paper, etc	1.25	1.00	.70
28	Paper and articles of paper—boxes	1.25	1.00	.60
29	Paper and articles of paper—labels, etc	1.35	1.00	.65
30	Paper and articles of paper—wall paper, etc	1.35	1.00	.70
31	Paper and articles of paper—lining, carpet, etc	1.25	1.00	.60
32	Paper and articles of paper—book, etc	1.25	1.00	.70
33	Paper and articles of paper—writing, etc	1.25	1.00	.70
34	Paper and articles of paper—printing, other than newsprint, poster, etc	1.25	1.00	.65
35	Paper and articles of paper—wrapping, etc	1.25	1.00	.65
36	Rails and fastenings—rails and ties	20.00	16.00	[1] 12.32
37	Rails and fastenings—rail fastenings	1.00	.80	.40
38	Railway supplies, axle-wheels and forgings	1.00	.85	.45
40	Roofing, roofing material—roofing, etc	1.10	.90	.60
41	Rosin	1.20	.75	.50
42	Soap, etc	1.25	1.00	.50
43	Sodium (soda), etc	1.00	.75	.40
45	Pressed-steel car sides, etc	1.25	1.00	.70
46	Wire and wire goods—cable, rope, strands, etc	1.20	.90	.45
47	Wire and wire goods—rods, wire	1.00	.80	.40

[1] Rate per long ton.

(Fourth Section Order No. 9280)

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of March, A. D. 1926.

COMMODITIES TO PACIFIC COAST TERMINALS

By application No. 12436 R. H. Countiss, agent, for and on behalf of various carriers parties to his tariffs I. C. C. Nos. 1114 and 1118, asks for authority to establish reduced rates for the transportation of iron and steel articles and other commodities listed in Exhibit A attached to said application No. 12436, in carloads, from Chicago, Ill., and other points in eastern defined territories Group D and west, as described in said tariffs I. C. C. Nos. 1114 and 1118, including points in Group C on the Chicago, Milwaukee & St. Paul Railway, Westport, Ind., and west thereof, to Pacific coast terminals, as described in said tariffs, and to continue their present higher rates on said commodities to intermediate points, without observing the long-and-short-haul provision of the fourth section of the act to regulate commerce. A hearing having been held upon the said application, and full investigation of the matters and things involved therein having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the said application No. 12436 be, and the same is hereby, denied.

By the commission.

[SEAL.] GEORGE B. MCGINTY, *Secretary.*

Mr. GOODING. Mr. President, I ask unanimous consent that the unfinished business be temporarily laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

INDEPENDENT OFFICES APPROPRIATIONS

Mr. WARREN. I move that the Senate proceed to the consideration of the bill (H. R. 9341) making appropriations for the Executive Office and sundry independent executive bureaus, boards, commissions, and offices for the fiscal year ending June 30, 1927, and for other purposes.

The motion was agreed to.

Mr. GOODING. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Ashurst	Fess	King	Robinson, Ind.
Bayard	Fletcher	La Follette	Sackett
Bingham	Frazier	Lenroot	Sheppard
Blease	George	McKellar	Shortridge
Borah	Gerry	McLean	Smoot
Bratton	Gillett	McNary	Stanfield
Brookhart	Glass	Mayfield	Stephens
Broussard	Goff	Means	Swanson
Bruce	Gooding	Metcalf	Trammell
Butler	Hale	Neely	Tyson
Cameron	Harreld	Norris	Walsh
Capper	Harris	Nye	Warren
Copeland	Heflin	Oddie	Watson
Couzens	Howell	Overman	Wheeler
Cummins	Johnson	Phipps	Williams
Deneen	Jones, N. Mex.	Pine	Willis
Edwards	Jones, Wash.	Pittman	
Fernald	Kendrick	Ransdell	
Ferris	Keyes	Robinson, Ark.	

The PRESIDING OFFICER. Seventy-two Senators having answered to their names, a quorum is present. The question before the Senate is on the motion of the Senator from Wyoming [Mr. WARREN] to proceed to the consideration of the independent offices appropriation bill.

The motion was agreed to.

LONG-AND-SHORT-HAUL CLAUSE OF INTERSTATE COMMERCE ACT

Mr. GOODING. Mr. President, I send to the desk a proposed unanimous-consent agreement and ask that it may be read.

The PRESIDING OFFICER. The clerk will read as requested.

The Chief Clerk read as follows:

Ordered, by unanimous consent, That on the calendar day of Tuesday, March 23, 1926, at not later than 3 o'clock p. m., the Senate will proceed to vote without further debate upon any amendment that may be pending, any amendment that may be offered, and upon the bill (S. 575) to amend section 4 of the interstate commerce act, through the regular parliamentary stages to its final disposition.

Mr. GOODING. The reason why the time has been fixed as March 23 is that we find several Senators are leaving the city over the 17th and will not be back, so we could not very well take a vote this week. It was thought best to give everyone plenty of time so that Senators may be here if they care to vote. I shall be on hand all the time and willing to lay the unfinished business aside temporarily in order that the business of the Senate may not be curbed in any way. It is understood that on Monday we will ask the Senate to take a recess so that the three hours on Tuesday may be given over to the discussion of the bill and that the time will be divided. The Senator from Ohio [Mr. FESS] for those opposed to the bill and the Senator from Nevada [Mr. PITTMAN] for those who favor the bill will get together and divide the time.

The PRESIDING OFFICER. Is there objection to the unanimous-consent agreement?

Mr. LENROOT. Is the last statement of the Senator to be incorporated as a part of the agreement?

Mr. GOODING. No.

Mr. LENROOT. Otherwise some Senator might get recognition and could not be prevented from occupying the time. I have no objection if that is made a part of the agreement.

Mr. GOODING. It is not a part of the agreement, but I will ask that it may be incorporated as a part of it.

Mr. ROBINSON of Arkansas. Mr. President, if the agreement is entered into, may I ask what it is proposed the Senate shall proceed to do between now and the time the vote is to be taken?

Mr. SMOOT. If the agreement is entered into and the unfinished business is laid aside at any time, I shall ask that the Italian debt settlement bill be taken up for consideration.

Mr. PITTMAN. Mr. President, taking into consideration the number of Senators I have heard express a desire to speak on the unfinished business, I am satisfied it will take two or three days for discussion any way. With the permission of the Senate, when we convene to-morrow morning I intend to discuss the subject. I hope that a recess may be taken so we can proceed immediately with the unfinished business. I hope to discuss it completely to-morrow. There are other Senators who intend to speak, but there are a number of them who have to

be absent because of previous engagements to make addresses on St. Patrick's day. For their accommodation I think there should be some time certain fixed. That is about all there is that is involved. That is all I care anything about. As to the division of time I will have finished to-morrow what I have to say, unless something new comes up and I would ask then merely an opportunity to reply briefly.

Mr. LENROOT. I understand the division of time applies only to Tuesday.

Mr. GOODING. Yes; to Tuesday.

Mr. ROBINSON of Arkansas. I do not desire to make any objection to any request that is satisfactory to the Senator from Nevada [Mr. PITTMAN] in connection with the business that is now before the Senate. I know he has given a great deal of study to the bill and is profoundly interested in it, as is its author, the Senator from Idaho [Mr. GOODING]. But I am compelled to be absent for at least two days, and I would not want the Italian debt settlement bill taken up prior to the time of my return. I would not want to enter into an agreement which would contemplate that procedure.

Mr. SMOOT. If the Italian debt settlement bill is taken up Wednesday and the Senator will be back Thursday, that will not interfere, because more than likely I would occupy all of the time on Wednesday in explanation of it.

Mr. ROBINSON of Arkansas. But I would like to hear what the Senator will have to say about the Italian debt settlement. I do not want to be in the attitude of objecting to proceeding with the consideration of that matter, but it is not helpful to me to know that the Senator from Utah is making a statement about the subject when I am absent. I shall ask the Senator from Utah to agree now not to call up the Italian debt settlement bill prior to Thursday.

Mr. GOODING. I hope the Senator from Utah will agree to that proposition.

Mr. ROBINSON of Arkansas. I am sure there are appropriation bills and other matters pending which will probably consume much time, and I doubt whether the so-called Italian debt settlement can be proceeded with this week.

Mr. SMOOT. I am anxious to comply with any request of the Senator from Arkansas if it is possible for me to do so.

Mr. McKELLAR. I can not possibly be here on Wednesday.

Mr. SMOOT. I will gladly agree to the suggestion of the Senator.

Mr. FESS. May I say I understood it was the purpose to take up the public buildings bill if there was any lapse of business before the Italian debt settlement is proceeded with.

Mr. ROBINSON of Arkansas. Since I engaged in the colloquy with Senators touching the time to take up the Italian debt settlement, it has been suggested by Senators on both sides of the Chamber that an arrangement was tentatively entered into, at least an announcement was made by the steering committee on the majority side of the Chamber, that the Italian debt settlement bill would follow the so-called long and short haul bill. There are a number of Senators who would like to be here when the debt settlement is being considered, and I think that arrangement ought to be adhered to.

Mr. SMOOT. Of course I do not want it put over until next week. I am perfectly willing to say that I will not bring it up until Thursday when the Senator from Arkansas is here.

Mr. ROBINSON of Arkansas. So far as I am concerned I am satisfied with that arrangement.

Mr. SMOOT. I will assure the Senator that I shall not bring it up before Thursday any way.

The PRESIDING OFFICER. Before the unanimous consent agreement can be entered into, the Clerk will call the roll to ascertain the presence of a quorum.

The Chief Clerk called the roll, and the following Senators answered to their names:

Ashurst	Ferris	Keyes	Ransdell
Bayard	Fess	King	Robinson, Ark.
Bingham	Fletcher	La Follette	Robinson, Ind.
Blease	Frazier	Lenroot	Sackett
Borah	George	McKellar	Sheppard
Bratton	Gerry	McLean	Shortridge
Brookhart	Gillett	McNary	Simmons
Broussard	Glass	Mayfield	Smoot
Bruce	Goff	Means	Stanfield
Butler	Gooding	Metcalf	Stephens
Cameron	Hale	Neely	Trammell
Capper	Harreld	Norris	Tyson
Copeland	Heflin	Nye	Walsh
Couzens	Howell	Oddie	Warren
Cummins	Johnson	Overman	Watson
Deneen	Jones, N. Mex.	Phipps	Wheeler
Edwards	Jones, Wash.	Pine	Williams
Fernald	Kendrick	Pittman	Willis

The PRESIDING OFFICER. Seventy-two Senators having answered to their names, a quorum is present. The Secretary will read the request for a unanimous-consent agreement which has been made by the Senator from Idaho [Mr. GOODING].

The Chief Clerk read as follows:

Ordered, by unanimous consent, That on the calendar day of Tuesday, March 23, 1926, at not later than 3 o'clock p. m., the Senate will proceed to vote without further debate upon any amendment that may be pending, any amendment that may be offered, and upon the bill (S. 575) to amend section 4 of the interstate commerce act, through the regular parliamentary stages to its final disposition; that a recess be taken on Monday until 12 o'clock m. Tuesday, and the time between 12 o'clock and 3 o'clock p. m. on said day to be equally divided between the proponents and opponents of the bill, the time of the former to be controlled by Senator PITTMAN and of the latter by Senator FESS.

Mr. BRUCE. Mr. President, I object.

The PRESIDING OFFICER. Objection is made.

Mr. PHIPPS. Mr. President, I desire to give notice that following the speech of the senior Senator from Nevada [Mr. PITTMAN] on the long and short haul bill on to-morrow I desire to have the floor for a short statement.

Mr. BRUCE. I did not catch what the Senator from Colorado said.

The PRESIDING OFFICER. The Senator from Colorado announced his desire to make a short statement following the speech to be delivered to-morrow by the senior Senator from Nevada [Mr. PITTMAN].

Mr. BRUCE. Mr. President, I am glad to hear the statement. I have never been approached to give my assent in any shape or form to any arrangement by which the debate is to be conducted on the subject. That sheds some additional light on the situation.

Mr. PHIPPS. I did not catch the Senator's remark.

The PRESIDING OFFICER. The Chair will say that merely a formal notice was given by the Senator from Colorado of his intention to secure the floor at the time named by him.

Mr. BRUCE. Very well.

INDEPENDENT OFFICES APPROPRIATIONS

The PRESIDING OFFICER. In accordance with the motion of the Senator from Wyoming [Mr. WARREN], which was agreed to, the Chair lays before the Senate House bill 9341.

The Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 9341) making appropriations for the Executive Office and sundry independent executive bureaus, boards, commissions, and offices for the fiscal year ending June 30, 1927, and for other purposes, which had been reported from the Committee on Appropriations with amendments.

Mr. WARREN. Mr. President, I make the usual request that the formal reading of the bill be dispensed with, that the bill may be read for amendment, committee amendments to be first considered, and other amendments to be considered later.

The PRESIDING OFFICER. Is there objection?

Mr. KING. Mr. President, in view of the fact that the bill is not long and is very important, I ask that it be read textually, so that we may be advised of its contents.

The PRESIDING OFFICER. The bill will be so read. The Chair did not understand the Senator from Utah [Mr. KING] to object to the request to dispense with the formal reading of the bill, but that he merely desired that it might be fully read for amendment. Without objection, the request of the Senator from Wyoming is agreed to.

Mr. KING. My suggestion was that when the Secretary reads the bill for amendments it be read textually, so that we may be advised of its contents.

The PRESIDING OFFICER. The Chair so understands.

The Chief Clerk proceeded to read the bill, and read to the end of line 10 on page 4, the last clause read being as follows:

INDEPENDENT ESTABLISHMENTS

ALIEN PROPERTY CUSTODIAN

For expenses of the Alien Property Custodian authorized by the act entitled "An act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, as amended, including personal and other services and rental of quarters in the District of Columbia and elsewhere, per diem allowances in lieu of subsistence not exceeding $4, traveling expenses, law books, books of reference and periodicals, supplies and equipment, and maintenance, repair, and operation of motor-propelled passenger-carrying vehicles, $130,000, of which amount not to exceed $122,900 may be expended for personal services in the District of Columbia: *Provided,* That this appropriation shall not be available for rent of buildings in the District of Columbia if suitable space is provided by the Pacific Buildings Commission.

Mr. KING. Mr. President, I should like to ask the Senator from Wyoming if in the consideration of this item, dealing with the Alien Property Custodian, the committee took any testimony relative to the activities of that officer?

Mr. WARREN. We had before us the very extensive hearings which were taken before the House committee, and they were considered by the subcommittee of the Committee on Appropriations very fully. I presume the Senator may not have had time to read those hearings.

Mr. KING. No; I have not been able to do so.

Mr. WARREN. But they are quite full, and if the Senator would like to see them I have a copy here and will hand it to him.

Mr. KING. I had in mind, Mr. President, if the Senator will pardon me, the fact that a resolution has been pending before the Judiciary Committee to investigate the operations of the Alien Property Custodian's office. We have deferred taking the matter up in the Judiciary Committee because of some information to the effect that Mr. McCarl, the Comptroller General, has delegated—I do not know what authority he has—a number of employees under his jurisdiction to go over the accounts of the Alien Property Custodian. I was wondering whether that matter had come to the attention of the committee when they were considering the appropriation for a continuance of this organization.

Mr. WARREN. The Senator has probably noticed that there is a reduction from $188,000 to $130,000 in the appropriation for the Alien Property Custodian's office.

Mr. KING. Evidently the question of the investigation and the authority by which it is being carried on and its effects were not considered by the committee.

Mr. WARREN. That matter was not before us.

Mr. KING. And, therefore, it will be unnecessary for me to continue the inquiry.

The reading of the bill was resumed.

The next amendment of the Committee on Appropriations was, under the heading "American Battle Monuments Commission," on page 5, line 3, after the word "commission," to strike out the comma and "as authorized by law," and at the beginning of line 12, to strike out "$2,500" and insert "$5,000," so as to read:

For every expenditure requisite for or incident to the work of the American Battle Monuments Commission authorized by the act entitled "An act for the creation of an American Battle Monuments Commission to erect suitable memorials commemorating the services of the American soldier in Europe, and for other purposes," approved March 4, 1923, including the acquisition of land or interest in land in foreign countries for carrying out the purposes of said act without submission to the Attorney General of the United States under the provisions of section 355 of the Revised Statutes; employment of personal services in the District of Columbia and elsewhere; the transportation of, mileage of, reimbursement of actual travel expenses or per diem in lieu thereof to the personnel engaged upon the work of the commission; the reimbursement of actual travel expenses (not exceeding $8 per day) or per diem in lieu thereof (not exceeding $7 per day) to, and the transportation of the members of the commission while engaged upon the work of the commission; the establishment of offices and the rent of office space in foreign countries; the purchase of motor-propelled passenger-carrying vehicles for the official use of the commission and its personnel in foreign countries, at a total cost of not to exceed $5,000; the maintenance, repair, and operation of motor-propelled passenger-carrying vehicles, which may be furnished to the commission by other departments of the Government or acquired by purchase; printing, binding, engraving, lithographing, photographing, and typewriting; the purchase of maps, textbooks, newspapers, and periodicals, $800,000.

The amendment was agreed to.

The next amendment was, on page 6, line 2, after the word "that," to strike out "without reference to the requirements of existing laws or regulations, the commission may employ, by contract or otherwise, professional and technical personnel, and may make contracts for work in Europe," and insert "notwithstanding the requirements of existing laws or regulations and under such terms and conditions as the commission may in its discretion deem necessary and proper, the commission may contract for work in Europe, and engage, by contract or otherwise, the services of architects, firms of architects, and other technical and professional personnel," so as to make the further proviso read:

Provided further, That notwithstanding the requirements of existing laws or regulations and under such terms and conditions as the commission may in its discretion deem necessary and proper, the commission may contract for work in Europe, and engage, by contract or otherwise, the services of architects, firms of architects, and other technical and professional personnel.

The amendment was agreed to.

The next amendment was, under the heading "Board of Tax Appeals," on page 7, line 17, after the word "supplies," to strike out "$428,616" and insert "of which $13,888.64 shall be immediately available, $594,224.64"; and in line 19, after the word "exceed," to strike out "$256,640" and insert "$422,248.64," so as to read:

For every expenditure requisite for and incident to the work of the Board of Tax Appeals as authorized under Title IX, section 900, of the revenue act of 1924, approved June 2, 1924, including personal services and contract stenographic reporting services, rent at the seat of government and elsewhere, traveling expenses, necessary expenses for subsistence or per diem in lieu of subsistence, car fare, stationery, furniture, office equipment, purchase and exchange of typewriters, law books and books of reference, periodicals, and all other necessary supplies, of which $13,888.64 shall be immediately available, $594,224.64, of which amount not to exceed $422,248.64 may be expended for personal services in the District of Columbia.

The PRESIDING OFFICER. The Chair will suggest that apparently there is a clerical error on page 7, line 17.

Mr. SMOOT. Mr. President, I was going to call attention to the fact that there is apparently a clerical error at the point indicated, and I ask unanimous consent that that error may be corrected at the desk.

The PRESIDING OFFICER. The Clerk will read the amendment with the clerical error corrected.

The Chief Clerk proceeded to read as follows:

Of which $13,888.64 shall be immediately available.

Mr. WARREN. I call the attention of the Senator from Utah to the fact that I think he is in error. I will ask that the reading be suspended for a moment.

Mr. SMOOT. Mr. President, the object of the amendment I know was to make $13,888.64 immediately available. I thought perhaps, it would be better to have it read "$594,224.64, of which $13,888.64 shall be immediately available," but it is mixed up with the other item there. I think the only way to carry out the idea intended, inasmuch as there are two items there, is to allow it to remain as it is now in the bill in lines 17 and 18, so as to read, "of which $13,888.64 shall be immediately available." I rather think that it is proper in the way in which it appears.

The PRESIDING OFFICER. It will be read as in the text.

Mr. FLETCHER. Mr. President, there is still $100,000 more than is needed.

Mr. SMOOT. That comes about by the increase of the salaries of members of the Board of Tax Appeals as provided in the last revenue bill. The House did not take into consideration the increase of the salaries of members of the board from $7,500 to $10.000 for 16 members instead of seven.

Mr. WARREN. That matter was carefully considered, and time was taken to go over it, and I am sure it is right.

Mr. KING. Mr. President, I do not see how the increase of the salary of members of the Board of Tax Appeals from $7,500 to $100,000 each would change the figures "$256,640" to "$422,248."

Mr. WARREN. The Senator will remember that we also increased the number of employees under the law.

Mr. KING. No; there was no increase in the number.

Mr. WARREN. Then perhaps the Senator can tell me how many there are?

Mr. KING. There are 16 members of the Board of Tax Appeals, and the salary of each was increased from $7,500 to $10,000 by the last revenue bill.

Mr. WARREN. I send to the desk a document dealing with this subject, which I ask to have read.

Mr. KING. I will not ask for an explanation of the matter; I will listen to the document, and see what it says.

The PRESIDING OFFICER. In the absence of objection, the Secretary will read as requested.

The Chief Clerk read as follows:

BUREAU OF THE BUDGET,
Washington, February 27, 1926.

SIR: I have the honor to submit herewith for your consideration, and upon your approval, for transmission to Congress, a supplemental estimate of appropriation for the Board of Tax Appeals for the fiscal year ending June 30, 1927, amounting to $165,608.64, as follows:

Salaries and expenses, Board of Tax Appeals: For salaries, Board of Tax Appeals, $165,608.64, of which not to exceed $13,888.64 shall be immediately available	$165,608.64

The revenue act of 1926, approved February 26, 1926, increases the salaries of the members of the Board of Tax Appeals from $7,500 to $10,000 per annum and provides for a membership of 16 instead of 7 members during the fiscal year 1927. The Budget for the fiscal year ending June 30, 1927, carries an estimate for seven members only at

$7,500 each per annum. To meet the salaries of the 16 members for the fiscal year 1927 an additional appropriation is required of $107,500.

In addition to this amount the estimate submitted herewith provides for additional personnel to meet the new duties and responsibilities devolving upon the Tax Appeals Board under the revenue act of 1926, including one secretary for each of the nine additional members of the board, as follows:

	Number	Salary
Clerical, administrative, and fiscal:		
Grade 10, $3,300 to $3,900; average, $3,600—Administrative officer	1	$3,600
Grade 6, $2,100 to $2,700; average, $2,400—Principal clerk	1	2,400
Grade 5, $1,860 to $2,400; average, $2,100—		
Senior accounting and auditing assistant	1	2,100
Secretaries	9	18,900
Grade 4, $1,680 to $2,040; average, $1,860—Stenographers	3	5,040
Grade 3, $1,500 to $1,860; average, $1,680—Assistant clerk	1	1,680
Grade 2, $1,320 to $1,680; average, $1,500—		
Typists	5	7,500
Junior clerks	2	3,000
Total	23	44,220

Further provision is made in the estimate for $13,888.64, to be immediately available, to cover the difference in pay between $7,500 and $10,000 of the 16 members of the Tax Appeals Board from February 26 to June 30, 1926.

This estimate of appropriation is required to meet a contingency resulting from legislation enacted since the submission of the Budgets for the fiscal years 1926 and 1927, and its approval is recommended.

Very respectfully,

H. M. LORD,
Director of the Bureau of the Budget.

The PRESIDENT.

Mr. WARREN. Mr. President, I will say to the Senator from Utah that the number of the judges themselves is not increased, but we are paying some shortages as well as for the current needs. In the first place, we must appropriate for the next year; then we must also appropriate for the increase in salary for the balance of the present year; and taking it all together the amount figures up correctly, I think, and the statement shows the figures we have to be correct.

Mr. SMOOT. The Senator is correct in saying that there was an increase, from this fact: The act of 1924 provided that after June 30, 1926, there should be only seven members on that board; but the act of 1926, just passed, provided that there should be 16 members. The Budget sent up the estimate for only the seven members, and the House passed it; so we had to provide for the difference between 7 members, at $7,500, and 16 members, at $10,000.

Mr. WARREN. Did not the new revenue bill provide for leaving the door open for the increased number?

Mr. SMOOT. No; the old law up until this year provided for 16, when they were to be decreased to 7, but the Treasury Department never appointed less than 16.

Mr. WARREN. Of course, the Senator from Utah knows there is that difference to cover.

Mr. SMOOT. Yes.

Mr. KING. Mr. President, in my judgment, this appropriation is entirely too much, as are many of the appropriations which are carried in these bills which come before us for consideration.

We started out with the Board of Tax Appeals with the understanding that at the end of the year, as stated by my colleague, the number was to be seven and no more. Seven, or at the most 12, for two years, would have been all that were necessary; but the rule is, when you get anybody into office, that you never can legislate him out. The President of the United States had named 16, and 16 became a mystic, a sacred number; and therefore we must perpetuate 16 officials in office, though the greater part of them had been unimportant employees in the bureau and were lifted up bodily from clerkships, where they were getting $3,000, or perhaps $4,000, a year—a few of them $5,000—to judges now with salaries of $10,000 each.

That is the way the Government does its business. It creates a little nucleus, and that nucleus, like the cancer, spreads until it is a national malady, and we must have more offices; and when we create one man who is a judge or a head of a bureau he must have an assistant and secretaries and clerks and typists and stenographers, all down the line.

There are judges of many of the supreme courts of the Union, where they have litigation of the highest importance, who are satisfied if they can have a stenographer or a typist to aid them in the discharge of their duties. I heard hastily read the statement about the typists and the clerks and the secretaries. I will venture the assertion that this bill carries provision for a personnel of at least 50 as attendants and appendages to these 16 judges. We lift up out of the department 16 young men—a few we gathered from the outside, but most of them had been in the department—and we label them judges of the Board of Tax Appeals, with salaries of $10,000 each. Then, of course, when they wear the ermine, when they reach the high dignity of a judge, they must have secretaries and clerks and typists and all of the paraphernalia that belonged to a great court in an imperialistic country.

Mr. McKELLAR. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Tennessee?

Mr. KING. I yield.

Mr. McKELLAR. The Senator forgets that that is in entire accord with the Budget economy of this administration.

Mr. KING. Yes; Mr. President. The Budget economy at the end of the fiscal year 1927, for which we are appropriating, after the deficits are met, is going to impose upon the people of the United States an appropriation of approximately $5,000,000,000. I shall not, however, enter into a discussion of that, because heretofore I have called attention to the specific items which I thought would make up that stupendous sum; but I do protest against this creation of new offices, and then giving to those officials, some of whom may be necessary, such a cloud of attendants, so many assistants and aids and clerks and so on. I think it is indefensible.

We have created, as stated, 16 judicial positions on the Board of Tax Appeals. The salaries of these judges are $10,000. That is $160,000 a year. For those officials to function we have appropriated $594,224.64. I think it is indefensible; and if General Lord and the Budget approved of this appropriation, I think they failed in the discharge of their duties. The complaint I have made, Mr. President—and I have made it to General Lord and to his assistant, as I have made it upon the floor of the Senate—is that the Budget Bureau is too prodigal, too generous, too extravagant, too wasteful in the funds which it certifies may come within the presidential conception of economical administration.

If I thought it would do any good—but I know it would not—I should move to reduce this amount to not more than $300,000, and I think that is all that ought to be appropriated for this new organization. Next year it will be more, and the following year still more, just like all of these organizations. We get one barnacle fastened upon the Federal Government and it multiplies, just as mosquitos breed upon stagnant pools; and the Government is becoming a stagnant pool to breed mosquitos, which in turn breed others to suck the blood out of the taxpayers of the country.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the committee.

The amendment was agreed to.

The reading of the bill was resumed.

The next amendment of the Committee on Appropriations was, under the hearing "Bureau of Efficiency," on page 8, line 9, after the word "exceed," to strike out "$146,460" and insert "$205,540," so as to read:

For chief of bureau and other personal services in the District of Columbia in accordance with the classification act of 1923; contingent expenses, including traveling expenses; per diem in lieu of subsistence; supplies; stationery; purchase and exchange of equipment; not to exceed $100 for law books, books of reference, and periodicals; and not to exceed $150 for street-car fare; in all $210,000, of which amount not to exceed $205,540 may be expended for personal services in the District of Columbia.

The amendment was agreed to.

Mr. ROBINSON of Arkansas. Mr. President, we have heard a great deal of talk about the economy that is being practiced by the present administration. We are told, and the newspapers carry the story almost daily, that the President has accomplished something wonderful in compelling Congress to reduce appropriations. This is alleged to be the one outstanding triumph of the Coolidge administration.

I note that the appropriations for 1927 carried in this bill, the independent offices appropriation bill, exceed the appropriations for the same purposes for 1926 by $60,296,917.64, and I would like to have the chairman of the committee explain how this enormous increase in one small general appropriation bill, an increase of more than $60,000,000, as I have stated, supports the contention that the administration is practicing commendable economy.

Mr. WARREN. Mr. President, I think perhaps when we have finished the consideration of the bill, after seeing where these various items of expenditure occur, we can tell better why the total of the bill is greater than it was last year. There are several items in the bill, like the one debated to some extent a while ago—that is, the appropriation for the Board of Tax Appeals, in which I think we are all interested, except some who did not have incomes large enough to make them pay any tax. But I do not believe that was a partisan matter at all. It was the will of Congress that we should establish this Board of Tax Appeals, that we should provide them with the necessary help, and that we should pay the members of the board $10,000 instead of $7,500. Legislation of that kind presents to us the alternative of obeying the law and making the appropriations, or not providing the appropriation.

Mr. ROBINSON of Arkansas. I hope the Senator from Wyoming does not construe my remarks to be a criticism of him or of the Appropriations Committee.

Mr. WARREN. No; I do not.

Mr. ROBINSON of Arkansas. I pointed out the fact that the administration boasts that it is giving the country a wonderfully economical service. It is about the only thing that even the supporters of the administration ever say in justification of it.

Mr. WARREN. The Senator does not object to economical administration?

Mr. ROBINSON of Arkansas. No, but I am pointing out the fact that the pretense of those in authority that they are giving the country an economical administration is apparent when it is disclosed that in one single appropriation bill—the independent offices appropriation bill—the amount carried for the year 1927 exceeds the amount appropriated for the same purpose in 1926 by more than $60,000,000.

Mr. McKELLAR. Mr. President, I call the Senator's attention to the fact that including the deficiency appropriations already made, General Lord's statement as to the amount of appropriations to be made for the current fiscal year was in error by something like $500,000,000.

Mr. ROBINSON of Arkansas. Was that all?

Mr. McKELLAR. It is something like $500,000,000.

Mr. ROBINSON of Arkansas. A mere matter of $60,000,000 or $500,000,000 amounts to nothing when it comes to estimates and to economy practiced by this administration.

Mr. McKELLAR. These are actual figures. They show that General Lord is mistaken about the amounts appropriated to the extent of something like $500,000,000. I see the Senator from Utah looking at me. I am quite sure he will confirm the statement that as to the actual appropriations, including the deficiencies, for the present fiscal year, not counting those to be made hereafter—because we will have other deficiencies—the statement made by General Lord, Chief of the Budget, this Budget, which makes so for economy, according to the reports of our friends on the other side, is wrong by $500,000,000.

Mr. SMOOT. Every year there are deficiencies. In fact, I never knew a year, since I have been in the Senate, when there was not a deficiency appropriation bill as soon as we met, and in nearly every case there have been three of them during the session of Congress.

Mr. McKELLAR. If I may interrupt the Senator, not often do we find them in the immense proportions of those of this year. My recollection is that the deficiencies amount to something like $400,000,000 this year.

Mr. SMOOT. We often find that, and I want to say to the Senator that if General Lord had sent to the Congress estimates for what had been asked for originally, and Congress had complied, we not only would have appropriated what we did in the deficiency appropriation bills but it would have been twice that amount.

Mr. McKELLAR. The Senator will recall the fact that the last Congress appropriated $161,000,000 less than the estimates of General Lord, approved by the President and sent to Congress. In other words, the Senator will recall, from the statements that were made both by the majority of the Committee on Appropriations of the Senate and the majority of the Committee on Appropriations of the House, that the appropriations actually made by the wicked and extravagant Congress were $161,000,000 less than was recommended by the President and the Chief of the Budget. Yet it is broadcast to the country that the President and the Chief of the Budget are tremendously interested in securing economies for the American people, while the wicked Congress is putting everything in their way. The facts do not justify such statements.

Mr. SMOOT. General Lord, the Director of the Budget, as well as President Coolidge, are doing everything in their power to reduce the expenses of maintaining the Government; and if Congress had appropriated the $161,000,000 spoken of, we would not have had to appropriate $400,000,000 here in deficiency appropriation bills at the opening of the next Congress.

Mr. COUZENS. Mr. President, will the Senator yield?

Mr. SMOOT. I yield.

Mr. COUZENS. The Senator's last statement is an answer to the question I was just about to ask. It is absolutely futile for the Congress to reduce the Budget, because, as he has stated, it comes back with a deficiency bill which we must pass. I think it is all folly to spend any time on appropriation bills, when whatever we cut out must be later taken care of in a deficiency bill.

Mr. McKELLAR. If the Senator will just yield to me for a moment; $150,000,000, the Senator will recall, was contained in an item of appropriation for public buildings, and it did not go through. Yet that item is not in the deficiency appropriation bill. That is yet to come.

Mr. SMOOT. That was not included in the appropriations of last year.

Mr. McKELLAR. Yes; it was. We had a special communication from the President and the Chief of the Budget recommending it.

Mr. SMOOT. Then I misunderstood what the Senator said. There was no appropriation made for the buildings program last year at all.

I know the situation pretty thoroughly. I know that the expenses of the Government have been cut to the bone. I can not see, as I have said a number of times, where the expenses of the Government can possibly be cut in the future. With the amount of demands that are made upon the Government, the appropriations will not be less, until in some way or other we can reduce the interest paid upon our obligations, or can reduce the four hundred and some odd million dollars appropriated for the Veteran's Bureau; and in my opinion that will never be.

Mr. ROBINSON of Arkansas. Mr. President, will the Senator yield for a statement?

Mr. SMOOT. I yield.

Mr. ROBINSON of Arkansas. We can not reduce appropriations until we diminish the army that is constantly advancing on Washington with measured tread and deadening battle cry, demanding appropriations for every purpose on this earth. The Senator from Utah is skilled in matters of national finance. I sometimes think he is a magician when it comes to making figures reflect facts to suit his own will. I would like to have him explain how the increase of more than $60,000,000 in this one comparatively small appropriation bill is consistent with the boast we daily hear, that the administration has rendered the country a great service by practicing economy in all the departments of the Government.

The truth of the matter is that the expenses of the Government are constantly growing, not only for the reasons stated by the Senator from Utah a moment ago, but for the further and far more important reason that demands for appropriations are constantly increasing. They are coming from every source, and one of the greatest dangers to this country is the practice of associating an appropriation with legislation which has the effect of changing long-established and well-recognized policies of government. It is possible to get a measure passed to accomplish almost any end, if we provide an appropriation out of the Federal Treasury to accomplish it. But the point of the whole matter is that it is a waste of words, it is an act of insincerity, for anyone to claim that the Government is being administered in an economical way, to whomsoever the fault for extravagance may be due.

Mr. SMOOT. I want to say to the Senator from Arkansas that there is a good deal of truth in what he has said, and I agree with him thoroughly. As to the increase in this appropriation bill—it is not $60,000,000, however; it is $60,561——

Mr. ROBINSON of Arkansas. Oh, no. I said a while ago that the Senator from Utah was a magician when it comes to making figures reflect his will.

Mr. SMOOT. I thought the Senator said the estimate——

Mr. ROBINSON of Arkansas. No; I do not see how the Senator could have misunderstood me. What I have said—and I have said it so many times that it is incomprehensible to me how anybody, even the Senator from Utah, could have misunderstood me—was that the report accompanying this bill showed that the appropriations under the independent offices appropriation bill for the fiscal year 1927 exceed by $60,000,000 and more the appropriations for the same purposes in 1926, and that that was not consistent with the claim generally advanced by supporters of the administration that the Government is being economically administered.

Mr. NORRIS. If the Senator will yield, he prefaced his remarks by a very great compliment to the Senator from Utah, among other things calling him a magician. Now he should

not complain if, right after heaping those beautiful compliments on the Senator, the Senator from Utah should misunderstand what he said.

Mr. ROBINSON of Arkansas. I do not complain.

Mr. SMOOT. I will say to the Senator from Nebraska that there is such a thing as misunderstanding a man's statement.

Mr. NORRIS. But the Senator from Arkansas was complaining that he could not have misunderstood. I agree with the Senator from Utah that he did misunderstand.

Mr. SMOOT. The $60,000,000 is very easily explained, and I know that the Senator from Arkansas would not vote against it if his attention were called to it.

Mr. ROBINSON of Arkansas. I am not complaining about the appropriation. I am just pointing out the fact that you are not doing what you said you were doing.

Mr. OVERMAN. It appears on every appropriation bill.

Mr. ROBINSON of Arkansas. It appears in connection with every appropriation bill. I have said that there are reasons for it. The Senator from Utah stated some of them, and I think I have stated some myself. But the truth of the matter is that the Government of the United States is growing more and more expensive to the people of this country every day during the administration of Calvin Coolidge, President of the United States.

Mr. SMOOT. The chairman of the committee wants to explain it, and I will let him do so.

Mr. WARREN. The Senator from Arkansas will find that the report shows that the actual increase in the bill is only $50,106,000. That is the amount the Senator stated, less the amounts that are subtracted. These large amounts are made up in this way, and I will refer to just a few of them. There is the United States Veterans' Bureau item, which is $57,265,000 more this year than last year because of some laws that were enacted during the war about insurance, and so forth, and the expenditure has increased to that sum.

Mr. ROBINSON of Arkansas. I have not complained about it. I have merely pointed out the fact that the pretext or the claim that the Government is being economically administered is not substantiated by the facts.

Mr. WARREN. I think the Senator will admit that the appropriations are proper, whether they are more or less.

Mr. ROBINSON of Arkansas. I have not questioned that fact. I have not the slightest doubt that next year the independent offices appropriation bill will carry a much larger sum than it carries this year, and that will be justified upon the same principle that we justify the increase this year over the amount carried last year. I do not seem to be able to make clear my proposition. The point of it is that when the Senator says he is cutting down expenditures, he is doing nothing of the kind. He is yielding to the apparently irresistible pressure to constantly increase Federal expenditures.

Mr. WARREN. There is also $66,000,000 of adjusted compensation. I assume from what the Senator said that he does not wish me to proceed with the information. The items are all accounted for in similar manner.

Mr. ROBINSON of Arkansas. I did not say anything about the Senator not proceeding. I am perfectly willing that he shall make all the explanation he desires.

Mr. OVERMAN. There is one item I would like to mention.

Mr. ROBINSON of Arkansas. My point is that the bill is largely in excess of the amount carried last year. The same is true of all the general appropriation bills. Instead of cutting down Government expenses, the Senator is constantly yielding to pressure to augment them.

Mr. OVERMAN. There is an item for the Board of Tax Appeals which is increased $165,608,000. That is an enormous increase.

Mr. SMOOT. Then why did the Senate and House enact the law requiring the expenditure?

Mr. OVERMAN. Because the Finance Committee recommended it.

Mr. SMOOT. Of course we did. The President had nothing whatever to do with it. He did not recommend it at all.

Mr. OVERMAN. That is an example of the Senator's economy.

Mr. SMOOT. No, it is not altogether mine. It is the economy of Congress.

Mr. FLETCHER. What I can not understand is why we have increased the members of the board at all.

Mr. SMOOT. The Senator was not here when we explained the matter before. Under the act providing for the fiscal year 1924, and this is the fiscal year 1927 for which we are appropriating, the number of judges on the board of appeals was reduced to seven, and the Budget estimated for seven only; but when the Congress passed the revenue law the number was increased to 15. Not only was the number increased to 15, but we increased the salaries from $7,500 for seven judges to $10,000 each for 15 judges. Congress enacted that law. The Senator knows very well there were only seven judges previously. Previously there was not the number of clerks, there was not the furniture, nor were there the expenses generally.

Mr. OVERMAN. And now the number has been increased and the board is greatly increased.

Mr. SMOOT. We have done just what Congress said and nothing more. If Congress keeps on enacting laws, sending them to the President of the United States, and in that way making them effective, we must appropriate under those laws, no matter how hard it may be or how burdensome the increase may fall upon the taxpayer.

The reading of the bill was resumed.

The next amendment of the Committee on Appropriations was, under the heading "Employees' Compensation Commission," on page 11, line 22, to strike out "$129,040" and insert "$132,540," so as to make the paragraph read:

Salaries: For three commissioners and other personal services in the District of Columbia in accordance with the classification act of 1923, including not to exceed $1,000 for temporary experts and assistants in the District of Columbia and elsewhere, to be paid at a rate not exceeding $8 per day, $132,540.

The amendment was agreed to.

The next amendment was, under the heading "Federal Board for Vocational Education," on page 14, line 1, after the word "periodicals," to insert "payment in advance for subscriptions to newspapers not to exceed $50 per annum," so as to make the paragraph read:

For the purpose of making studies, investigations, and reports regarding the vocational rehabilitation of disabled persons and their placements in suitable or gainful occupations, and for the administrative expenses of said board incident to performing the duties imposed by the act of June 2, 1920, as amended by the act of June 5, 1924, including salaries of such assistants, experts, clerks, and other employees, in the District of Columbia or elsewhere, as the board may deem necessary, actual traveling and other necessary expenses incurred by the members of the board and by its employees, under its orders; including attendance at meetings of educational associations and other organizations, rent and equipment of offices in the District of Columbia and elsewhere, purchase of books of reference, law books, and periodicals, payment in advance for subscriptions to newspapers not to exceed $50 per annum, stationery, typewriters and exchange thereof, miscellaneous supplies, postage on foreign mail, printing and binding to be done at the Government Printing Office, and all other necessary expenses, $73,620, of which amount not to exceed $56,680 may be expended for personal services in the District of Columbia.

The amendment was agreed to.

The next amendment was, on page 14, after line 8, to insert:

FEDERAL OIL CONSERVATION BOARD

The appropriation of $50,000 made in the first deficiency act, approved January 20, 1925, for the "Federal Oil Conservation Board, 1925 and 1926," shall remain available until June 30, 1927.

Mr. McKELLAR. Mr. President, may I ask the chairman of the committee if the Federal Oil Conservation Board is a board established by any law?

Mr. WARREN. Oh, yes. The only difference is that they did not use very much money last year, and we are reappropriating for them what they failed to use last year.

Mr. McKELLAR. I do not recall any act establishing the Federal Oil Conservation Board. I was wondering whether it was an executive bureau established by the Executive alone or whether it was established by Congress. Is it not true that it was established by the Executive himself?

Mr. WARREN. It was established by Congress all right, but behind it are some of the heads of the departments. They are members of the commission in a way. I will give the Senator the information a little later.

Mr. FLETCHER. I would like to inquire of the chairman of the Committee on Appropriations as to the number of independent offices, bureaus, boards, and commissions. Have the committee in their possession a list of the various offices? I would like to know how many there are of the commissions, boards, bureaus, and independent offices.

Mr. WARREN. This bill is very much like the old sundry civil bill, the omnium gatherum of different things that have no relation to each other. They are the different bureaus and commissions not included in the regular annual bills for the 7 or 8 or 10 departments. This bill takes in something from nearly all of the departments.

Mr. FLETCHER. I understand the purpose of the bill and what it covers, but I would like to know how many commis-

sions and bureaus and boards we have independent of the departments.

Mr. SMOOT. Independent establishments?

Mr. FLETCHER. Yes.

Mr. SMOOT. I think there are about 16 or 17 of them.

Mr. FLETCHER. Does that include commissions as well as bureaus?

Mr. SMOOT. I mean commissions, bureaus, and independent establishments, as they are called. There are 16 or 17 of them. In the reorganization of the departments, which, of course, *failed*—and I doubt very much whether it will succeed in the future—there were shown at least this number. There are at least that many.

Mr. FLETCHER. I thought perhaps there were more.

Mr. SMOOT. If anything, there are more.

Mr. FLETCHER. Each one of them has to have an appropriation for offices and clerks and stenographers and help and all that sort of thing.

Mr. SMOOT. That is true; but they have all been created by the Congress.

Mr. FLETCHER. We seem to be able to create these bureaus, but never to get rid of them. We ought eventually to get rid of those that we do not absolutely need.

Mr. SMOOT. That is a suggestion worthy of consideration. However, the Congress creates them, of course.

Mr. McKELLAR. Mr. President, I want to ask the Senator from Utah a question. The Senator said these bureaus are all created by Congress. As I recall it, the Federal oil conservation board was not created by Congress.

Mr. SMOOT. The Senator from Florida was speaking of the independent establishments.

Mr. McKELLAR. That is an independent establishment covered in an item in this bill.

Mr. SMOOT. But it is not an independent establishment.

Mr. McKELLAR. It is so treated in this bill.

Mr. SMOOT. Of course, there is an appropriation for it.

Mr. McKELLAR. What I want to know, if the Senator can tell us, is when the law was enacted that authorized the creation of the Federal Oil Conservation Board. My recollection is that the President appointed the board and then asked for a deficiency appropriation to pay the members of it, and that it has never been constituted by Congress. I doubt very much whether it ought to be included in this bill at all. I doubt very much whether we have the right to appropriate unless Congress has enacted a law creating the board.

Mr. SMOOT. I do not recall just when it was and how it was, but I can find it for the Senator in a little while.

Mr. McKELLAR. I have sent for the act, but it has not yet reached my desk. I will ask that the amendment may be passed over for a moment until I get the information. My recollection is that it was first mentioned in a deficiency appropriation bill of last year in an item of $50,000, and this is a reappropriation of that sum.

Mr. SMOOT. Let the amendment go over until the Senator gets the information.

The PRESIDING OFFICER. The amendment will be passed over temporarily.

The reading of the bill was resumed.

The next amendment of the Committee on Appropriations was, under the heading "Smithsonian Institution," on page 26, line 12, after the word "expenses," to strike out "$45,760" and insert "$46,260," and in line 13, after the word "exceed," to strike out "$23,500" and insert "$23,833," so as to make the paragraph read:

International exchanges: For the system of international exchanges between the United States and foreign countries, under the direction of the Smithsonian Institution, including necessary employees, purchase of books and periodicals, and traveling expenses, $46,260, of which amount not to exceed $23,833 may be expended for personal services in the District of Columbia.

The amendment was agreed to.

The next amendment was, on page 28, after line 14, to insert:

For the construction of a steel gallery over the west end of the main hall of the Smithsonian building, for the Division of Plants, $12,500.

The amendment was agreed to.

Mr. McKELLAR. I now have the act to which I referred a moment ago with reference to the Federal Oil Conservation Board. It is just as I expected. In the urgent deficiency act approved January 20, 1925, under the head of "Federal Oil Conservation Board," it was enacted as follows:

For expenses of the Federal Oil Conservation Board, convened by the President on December 18, 1924, and for each purpose connected therewith, to be expended at the discretion of the chairman of the board and to remain available until June 30, 1926, $50,000.

The Senator was in error when he said that we were merely making appropriations under acts authorized by the Congress.

Mr. SMOOT. I think yet there was an authoriaztion before the President ever appointed the members of the board.

Mr. McKELLAR. No; that was the board created under Executive order, and I think the Senator is mistaken.

Mr. SMOOT. That is not what the Senator said at all.

Mr. McKELLAR. Oh, yes.

Mr. SMOOT. No; the Senator from Florida asked the Senator from Utah how many independent establishments there were.

Mr. McKELLAR. I am not talking about that.

Mr. SMOOT. That is what I was talking about. I said the appropriations were made because of the fact that every independent establishment was created by act of Congress. This board is not an establishment.

Mr. McKELLAR. This particular one was not, but I want to ask the Senator in reference to it. He is well versed in these matters and I am sure he can tell me who are the members of the Federal Oil Conservation Board and how much of this appropriation they have spent.

Mr. FLETCHER. Is it a permanent board?

Mr. McKELLAR. No; it is a board convened by the President.

Mr. WARREN. I have here the Budget report if the Senator desires to see it.

Mr. McKELLAR. Let us have the clerk read it and see what it says.

The VICE PRESIDENT. The clerk will read as requested.

The legislative clerk read as follows:

BUREAU OF THE BUDGET,
Washington, February 26, 1926.

SIR: I have the honor to submit herewith for your consideration, and upon your approval for transmission to Congress, a draft of proposed legislation affecting the existing appropriation of $50,000 for expenses of the Federal Oil Conservation Board made by the first deficiency act of January 20, 1925 (43 Stat. 754).

"FEDERAL OIL CONSERVATION BOARD, 1952–26

"The appropriation of $50,000 made by the first deficiency act of January 20, 1925 (43 Stat. 754), for the expenses of the Federal Oil Conservation Board, fiscal years 1925 and 1926, shall remain available until June 30, 1927."

Up to the present time, by utilizing means available in the executive departments, it has been practicable to avoid expending any portion of this appropriation, and it is believed that only a nominal amount will be disbursed prior to June 30, 1926. As it is your desire that the board continue to function during the ensuing fiscal year, it will be necessary to obtain legislation extending the availability of the appropriation. The estimate herewith is for that purpose and its approval is recommended.

Very respectfully,

H. M. LORD,
Director of the Bureau of the Budget.

The PRESIDENT.

Mr. McKELLAR. It does not say who they are. I wonder if anyone knows who they are, what they are doing, and why we should reappropriate $50,000 if none was used last year. In accordance with the report furnished by the chief of the Budget Bureau, apparently, it is merely reappropriated without any specific use.

Mr. WARREN. Mr. President, the expectation is that it will be necessary. It is one of those situations—and that is why it is very acceptable for us to consider it—where, although there could have been men employed spending the money for the sake of spending it last year, there seemed to be no necessity for spending it, and none was used; but the desirability of the appropriation is evidently recognized, because it is budgeted here by General Lord in the usual way.

Mr. McKELLAR. I do not think we ought to appropriate this money when the sum appropriated last year was not used, when there is apparently no use for it now, and when nobody knows what the board is or what service it has performed. However, I shall not pursue the matter further. Our Republican friends have control of the Government, and if they want to appropriate the people's money in this way it is their matter.

The reading of the bill was resumed. The next amendment of the Committee on Appropriations was, under the subhead "Emergency shipping fund," on page 32, at the end of line 5, to strike out "$18,691,000" and insert "$13,900,000," so as to make the paragraph read:

For expenses of the United States Shipping Board Emergency Fleet Corporation during the fiscal year ending June 30, 1927, for administrative purposes, miscellaneous adjustments, losses due to the maintenance and operation of ships, for the repair of ships, and for carrying out the provisions of the merchant marine act, 1920, (a) the amount on hand July 1, 1926, but not in excess of the sums sufficient to cover all obligations incurred prior to July 1, 1926, and then unpaid; (b) $13,900,000; (c) the amount received during the fiscal year ending June 30, 1927, from the operation of ships.

Mr. FLETCHER. Mr. President, I think it would be a mistake to reduce the amount of the appropriation as specified in the bill as it came from the other House, which carried an appropriation for the purpose of operating ships, under the head of "Emergency shipping fund," as follows:

For expenses of the United States Shipping Board Emergency Fleet Corporation during the fiscal year ending June 30, 1927, for administrative purposes, miscellaneous adjustments, losses due to the maintenance and operation of ships, for the repair of ships, and for carrying out the provisions of the merchant marine act, 1920, (a) the amount on hand July 1, 1926, but not in excess of the sums sufficient to cover all obligations incurred prior to July 1, 1926, and then unpaid; (b) $18,691,000.

The amendment proposes to reduce the appropriation from $18,691,000 to $13,900,000. Then a little later on—and I think the reason for that is manifest—beginning on line 17 and going to line 23, inclusive, there is a provision for a contingent fund of $10,000,000. However, I regard it as more important that there should be ample provision made under the head to which I am referring than that there should be a $10,000,000 contingent fund. I approve of that provision; I think it is all right to have that provision in the bill. I had rather, if necessary, reduce that appropriation to $5,000,000 and restore the $5,000,000 to the other fund, as carried in the bill as it came from the House. I had rather not reduce the amount of $18,691,000 to $13,900,000. I would rather do away with the other provision, beginning in line 17, providing the contingent fund of $10,000,000, than to reduce the amount under this paragraph to $13,900,000, and for these reasons:

Mr. President, in the first place, we ought to keep in mind the importance of maintaining an American merchant marine. That has been a fixed policy of the Government. It is emphasized in the shipping act originally, and in the merchant marine act of 1920 it is further emphasized. In the act of 1920, section 7 provides:

That the board is authorized and directed to investigate and determine as promptly as possible after the enactment of this act and from time to time thereafter what steamship lines should be established and put in operation from ports in the United States or any Territory, district, or possession thereof to such world and domestic markets as in its judgment are desirable for the promotion, development, expansion, and maintenance of the foreign and coastwise trade of the United States and an adequate postal service, and to determine the type, size, speed, and other requirements of the vessels to be employed upon such lines and the frequency and regularity of their sailings, with a view to furnishing adequate, regular, certain, and permanent service.

That is what we specified in the legislation giving authority and making it the duty of the Shipping Board and the Emergency Fleet Corporation to establish lines and routes that will meet our commercial needs in foreign trade and maintain those services.

To do that there having come a slump not only in the United States but the world over in shipping since 1920, which has continued more or less down to to-day, we must bear some losses in the operation of our ships. We have not hesitated to say that we were sustaining losses; in fact, for some years back we have boasted of it, apparently. It has been shrieked from the housetops that we were losing money in operating the ships. The purpose of doing that was to discredit Government operation, I am quite sure, and to accomplish some ulterior object; but, nevertheless, we have been telling the world for some years past that we were sustaining losses in the operation of these ships and in keeping up our merchant marine.

Congress has accepted that condition and has every time come forward with the necessary appropriation. Congress has, in fact, said to the Shipping Board and to the world, "We intend to meet these losses cheerfully and fully, because we intend to create, establish, build up, and maintain an adequate merchant marine for the United States. That is what we have said over and over again. We have never hesitated to make the necessary appropriations to keep up these ships and maintain these services.

Congress realized the importance of having an adequate merchant marine under our flag. The people throughout the country, the agricultural interests, the manufacturing interests, shipping interests, business everywhere, realize that we must have under our flag in the foreign trade ships to take care of our commercial needs and enable us to meet competition by carrying our goods to foreign countries and bringing back to us the goods that we need from other countries without being wholly dependent upon competitors in foreign trade for the delivery of our goods. In pursuance of that policy, for the fiscal year 1924 we appropriated $50,000,000; for the fiscal year 1925 we appropriated $30,000,000 under this very head, under the very paragraph with which we are now dealing; and for the fiscal year 1926 we appropriated $24,000,000.

It is true some of the ships have been withdrawn. At one time we had 1,525 ships owned by the United States Government engaged in the foreign trade and operated by the Emergency Fleet Corporation. Now we have only 268. There has been a 50 per cent reduction during the last 18 months. The whole tendency seems to be to reduce the number of ships in operation, and, of course, the ultimate effect is going to be the abandonment of certain routes and services that are now being provided. That can not be escaped if we keep on reducing the number of ships, taking them out of the service and tieing them up. It is eventually going to reach the point where we will not be able to supply the service that is needed and required by our shippers. I hope that policy is going to be discontinued.

Mr. RANSDELL. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from Florida yield to the Senator from Louisiana?

Mr. FLETCHER. I yield.

Mr. RANSDELL. Will the Senator kindly explain, if he can, why this reduction is being made far below the amount appropriated last year and the previous year and the year preceding that? The Senator has given the amount of the previous appropriations. Who recommended this great reduction and why is it being made?

Mr. FLETCHER. My understanding is that Admiral Palmer, when he was president of the fleet corporation, before he retired, recommended for this year an appropriation of $18,000,000, in round numbers. I understand, however, that the Budget Director reduced that to some $13,000,000.

Mr. RANSDELL. Does the Senator mean the admiral recommended an appropriation of $18,691,000?

Mr. FLETCHER. That is my understanding.

Mr. RANSDELL. And the House adopted his recommendation?

Mr. FLETCHER. The House adopted that figure, but I think the Shipping Board was not satisfied with that; they thought they ought to have $24,000,000, but the Budget Director cut it down to $13,000,000.

Mr. RANSDELL. I understand the amount appropriated last year was $34,000,000.

Mr. FLETCHER. No; it was $24,000,000.

Mr. RANSDELL. I understood the Senator to say $34,000,000.

Mr. FLETCHER. No; the appropriation was $30,000,000 in 1925 and $24,000,000 in 1926.

Mr. RANSDELL. I misunderstood the Senator.

Mr. FLETCHER. And the Shipping Board, according to my recollection, although I will not be positive as to their exact recommendation, recommended more than Admiral Palmer suggested.

Mr. WARREN. Oh, no.

Mr. FLETCHER. He did not?

Mr. WARREN. I do not wish to disturb the Senator now, but when he has finished I will make a brief statement.

Mr. FLETCHER. If I am wrong in that I should like to be corrected.

Mr. WARREN. I do not believe Admiral Palmer appeared at all before the Budget or before the committee.

Mr. FLETCHER. I did not say he did. I think his recommendation was made to the Shipping Board. I do not think he made any official recommendation to the Budget or to the committee.

Mr. WARREN. If the Senator would like, I will read a brief extract from the House hearings showing the agreement between Chairman O'Connor and the Director of the Budget:

I have been advised by Chairman O'Connor that the Shipping Board and the Budget Bureau—

This is Captain Crowley, the president of the Fleet Corporation who is speaking:

I have been advised by Chairman O'Connor that the Shipping Board and the Budget Bureau have reached an agreement about the amount of $13,900,000, which is included in the proposed appropriation for the fiscal year 1927, to cover operations of the Fleet

Corporation. I concur in the opinion of the Shipping Board that this amount would not be sufficient to cover the losses of our present services, but we are prepared to proceed with this amount since the Bureau of the Budget has agreed to give consideration to a request for a supplemental appropriation should it become evident during the next fiscal year that such will be necessary.

Then he goes on:

To maintain our present services throughout the fiscal year 1927, it appears at present, would require approximately $18,691,000, but it is, of course, possible that additional lines will be sold and economies effected, which will materially reduce this amount.

The proceeds of the vessels sold, of course, are at the disposal of the Emergency Fleet Corporation or the Shipping Board. Furthermore, I think the Senator knows that I have always joined him in the effort to build up our merchant marine, and have always been liberal in my attitude toward appropriations for that purpose. The $10,000,000 of which the Senator speaks is, however, in my opinion, a very much larger factor than the difference in the appropriation for the other purpose, because it is the insurance, we may say, for the business that may be taken by ships that are purchased from the United States that happen to come back under the mortgages, as some of them do. They will go on and carry on the business under that appropriation. I do not believe we should raise this amount. I think we should carry it as we have it. We took all the evidence we could find; but it was the thought of a Representative, just at the moment the bill was about to pass on the other side, to offer that amendment; and without any further debate than his explanation, part of which I have read, it was adopted and came to us.

Mr. RANSDELL. Mr. President, will the Senator from Florida permit me to ask a question about the $10,000,000?

Mr. FLETCHER. Yes; I yield.

Mr. RANSDELL. Will the Senator from Wyoming kindly tell us why the proviso to this $10,000,000 appropriation was made:

Provided, That no expenditure shall be made from this sum without the prior approval of the President of the United States.

Is that a customary provision in an appropriation bill?

Mr. WARREN. It has been made a great many times in the past. In the present condition of uneasiness, so to speak, between the Emergency Fleet Corporation and the Shipping Board, and so forth, upon whom would the Senator place that responsibility, if not upon the President?

Mr. RANSDELL. I would place it where the law of 1920 places it—on the Shipping Board. I think it belongs to the Shipping Board. I do not see how the President is going to operate in a matter of that kind. He certainly must operate through somebody.

Mr. WARREN. There is quite a little agitation—and I presume the Senator may be conscious of it—in favor of doing away with the Shipping Board. I do not say that the President has any desire of that kind; but there has been a great deal said about it, and it has been proposed to have but one body, the Emergency Fleet Corporation. I take no part in that; but it seems that they are not entirely in harmony.

Mr. RANSDELL. Can the Senator tell me of any other case where a proviso of this kind is inserted in a bill, making an appropriation to a large independent body like the Shipping Board, and then saying that they must spend their money only with the approval of the President?

Mr. WARREN. It may not be in this particular bill, but I do not know what the Senator can have against it.

Mr. RANSDELL. I do not recall any such case. There may be precedents for it, but I do not recall them. When we give money to a department or to an independent organization, we allow them to expend it; but here we say that the President must approve it.

Mr. FLETCHER. Mr. President, what the Senator from Wyoming has read does not conflict at all with the statements I have made with reference to the origin of this appropriation.

My information is—and I state it on information and belief—that Admiral Palmer, when president of the Fleet Corporation, and just before retiring, reported to the Shipping Board recommending $18,000,000 under the head that we are discussing now; that the Shipping Board reported to the Budget Director recommending an appropriation in excess of that amount—at least $20,000,000; perhaps $24,000,000, but at least $20,000,000. I am not quite sure about the amount. The Budget Director reduced that to some $13,000,000.

The statement is made by Chairman O'Connor that perhaps he can get along with this $18,000,000 or $13,000,000, whatever he was dealing with there, with the understanding, however, that there is to be a subsequent recommendation and a subsequent appropriation in case he needs the money. In other words, he is looking ahead; and he has some assurance that if this does not take care of the needs of the Fleet Corporation, he will get further help through a deficiency appropriation later on.

Mr. WARREN. That was the language of the Representative who was offered that addition of $4,000,000. He in turn quoted Mr. O'Connor.

Mr. FLETCHER. I think he quotes from the other people; but, as I say, beginning with the fiscal year 1924 we appropriated $50,000,000; and in 1925, $30,000,000; and in 1926, $24,000,000. We have been gradually reducing this sum; but we ought not to reduce it down to $13,900,000 in this bill. We ought at least to hold what the House gave—$18,691,000. Therefore I am opposed to the amendment changing the $18,691,000 to $13,900,000.

Mr. WARREN. The Senator as he goes along perhaps overlooks the fact that they have all of the income from ships sold that they are constantly offering for sale.

Mr. FLETCHER. I know that. We have always taken that into consideration in the past. I see no reason why we should not provide them with ample funds to maintain these routes and these services, although trade is building, commerce is increasing, shipping is doing better; my understanding is that they are doing fairly well now, and some of these services are actually making a profit. Conditions are improving, and they may not need and probably will not need as much as they had last year, which was $24,000,000; but I am quite sure they are going to need this $18,691,000, and I do not want to cripple them by leaving them in need of funds to maintain these services, which it will be necessary to maintain if we are going to meet the needs of our foreign commerce.

When it comes to the other provision, beginning at line 17—

To enable the United States Shipping Board Emergency Fleet Corporation to operate ships or lines of ships which have been or may be taken back from the purchasers by reason of competition or other methods employed by foreign shipowners or operators, $10,000,000.

I think that is an admirable idea. I think it is well enough for us to serve notice on the world that we propose to maintain this merchant marine; that we propose to operate these ships, let it cost what it will; that if the people to whom we sell, by reason of competition or conferences or agreements or combinations or the operation of "fighting ships" or any other reason are forced out of business and obliged to return the ships to the Shipping Board, the Shipping Board will take them up and will continue that service, no matter what it costs.

It is well to do that. I am in favor of taking that stand firmly; and I am furthermore in favor of saying to the world that so far as Government ownership and operation of these ships is concerned, we propose to exercise our right and our privilege and our power in that regard just as long as we see fit, and we fix no time whatever when the Government is to retire from the operation of ships. Let the world know that. This is an indefinite thing.

When the time comes, eventually, when private owners are willing to come forward and are in position to keep the business in operation, and make our merchant marine safe under our flag on all the seas and through all the ports, well and good; we shall be ready to deal with them; but we are not advertising to the world that the United States is going out of the shipping business and is going to sacrifice or give up its ships.

On the contrary we want to tell them that we propose in every case where we sell ships that if the operators are forced out of business by foreign competitors or tricks or trades or what not, the Government will take those ships and maintain those services at any cost.

That is all right. That provision is fine. It belongs in the bill, but I think it would be wiser for us to make that fund $5,000,000 and not reduce the fund provided for under paragraph (b), which I have just been discussing; keep $18,691,000 for the Fleet Corporation to cover its expenses and its operations, and provide a fund of $5,000,000 to be used in case we have to take back ships after we have sold them.

I do not quite agree with the idea that that proviso is a wise one. I do not know any department or any bureau or any branch of the Government, when we make an appropriation, where we provide that the money shall be spent only with the approval of the President. The President can not run ships. This is the biggest merchant marine of any country in the world except that of England. It has a bigger business than any other four nations of the earth are conducting

to-day, excepting England. This is a tremendous business. The President has too much to do in looking after the things to which it is absolutely necessary for him to attend to give his attention to the operation of ships. Why, he has to have a spokesman for the White House. He is too busy even to give interviews to the newspapers. He has a substitute there. Certainly, when it comes to operating the ships, it is a sin and a shame to put that obligation and that duty on the President and require that none of this money shall be used by the agency created by Congress to conduct this business except with his approval. How is he going to know about it? Why bother the President with that detail? I do not think it belongs in the bill. I think that proviso ought to be stricken out.

Mr. WARREN. Mr. President, will the Senator allow me to interrupt him?

Mr. FLETCHER. I yield to the Senator.

Mr. WARREN. The President is the head of the Budget Bureau, is he not? He is the bureau, in fact.

Mr. McKELLAR. Mr. President——

Mr. FLETCHER. The President is the Commander in Chief of the Army and Navy; but he does not have supervision of all the expenditures of the Army or the Navy.

Mr. WARREN. There are a great many things that have to go to him for final indorsement.

Mr. McKELLAR. Mr. President, the President is not the head of this bureau.

Mr. WARREN. It is a little painful to find, when we undertake to cut down at all our great outgo and our expenses, that almost the first time we attempt to cut down we are met with arguments that, more or less, we shall attack the President and the powers we have given him along other lines.

Mr. FLETCHER. I am not attacking the President. I say we ought not to put on the President this detail, this work. He ought not to be expected to do it. The country does not expect it.

We have created a Shipping Board, charged with this responsibility, and the Shipping Board has been directed by law to form a Fleet Corporation. It acts as a sort of board of directors of this corporation, known as the Fleet Corporation. There is the agency created by Congress. We let them spend $13,900,000 right above here. Why can they not spend $10,000,000, if it is necessary, in addition to that? Why require that the President shall supervise the expenditure of that $10,000,000, any more than that he shall supervise the expenditure of the $13,900,000? There is not a bit more reason for it.

I think, in the first place, we ought not to agree to the committee amendment; and then I think we ought to strike out the proviso with reference to the $10,000,000, and I should be willing to reduce that to $5,000,000 if necessary.

Mr. RANSDELL. Mr. President, will the Senator permit a suggestion?

Mr. FLETCHER. I yield.

Mr. RANSDELL. I understood the Senator from Wyoming to say that he did not like to make an attack on the President. I am sure none of us would like to make an attack on the President; but, in all fairness, can it be said that this proviso is not an attack on the Shipping Board?

Mr. FLETCHER. Certainly it is.

Mr. RANSDELL. The Shipping Board was created by law to handle the funds and run these ships. It was not to be done by the Fleet Corporation. The Shipping Board is the responsible organization created by Congress for that purpose; and here we take out of the hands of the Shipping Board an agency for which it was created and turn it over to the President of the United States. That is an attack on the Shipping Board, but surely it is no attack on the President.

Mr. FLETCHER. I do not mean to say for a minute that the President could not run these ships; but that is not the proposition. The idea is that the President has other things to do, and that he ought not to be expected to attend to details like that. This money ought to go where the other money goes that is appropriated under this bill and put in the charge of the agency that the Congress has created. They are the ones that are responsible for it. As the Senator from Louisiana has said, it is a positive, outright reflection on the Shipping Board to suggest that we have not enough confidence in them to allow them to spend this money if it needs to be spent.

Mr. JONES of Washington. Mr. President, with reference to the last suggestion I want to say to the Senator that the Shipping Board prepared a bill and sent it up for introduction, approved by the chairman of the Shipping Board and other members of the Shipping Board, to create a $15,000,000 fund for the purposes herein specified, and they had in that bill this proviso.

I think the Senator from Florida and I are very much in accord in general with reference to the merchant marine. We are both intensely interested in establishing and maintaining an American merchant marine. I think we will both go the same length to secure a permanent American merchant marine. I think I can join in the statement of the Senator from Florida that we want to advise the world that we propose to maintain ourselves on the sea. I have come to the point where I will vote for any measure, I do not care what it is, that will give us a reasonable assurance that we will have and maintain an American merchant marine. I think that is vital to our prosperity and to our security, and I would not do anything that would give to the world any impression that we propose to give up the sea. Sometimes I become very much discouraged at the situation, at the inactivity of our people, and at their apparent indifference to the merchant-marine problem.

I want to throw out this suggestion that in my judgment the time is nearly at hand when we must take some affirmative step toward insuring a permanent American merchant marine. The ships we are running are wearing out, and they are wearing out rapidly. They are getting old. The important problem now, in my opinion, is the replacement of those ships. I think that within the next year it will be imperative upon this Government to take affirmative steps looking to their replacement.

If it can not be done by offering inducements to private parties which will lead them to invest in the building of ships to run on the existing routes, then it will be necessary for the Government to provide money to build ships to take the places of those ships as they are worn out. Unless we do that in the very near future, in my judgment we will find ourselves back to where we were when the World War broke out, and possibly in an even worse condition.

With reference to the situation which confronts us here, I am satisfied that we ought to maintain the routes we have in operation now. We are selling some of these routes. Several ships and some routes have been sold during the last year. That, of course, will diminish the drain upon the Federal Treasury, as long as those ships are maintained by those who have purchased them. Personally, I am not in full accord with the plan that has been followed in the sale of the ships, but it seems to be an adopted policy, and I do not complain. Most of our sales have been made with a guaranty that the service shall be maintained for five years. I myself do not think that is sufficient. I would rather see the ships sold at a much smaller price, with a satisfactory guaranty that as they wear out they will be replaced by ships equally as good, if not better, and the service maintained, than to get a larger sum of money out of the ships, but with no assurance that they will be maintained and that the service will be kept up for a period longer than five years. But that is the policy that is being followed, and I hope that where these sales are made the lines will be so prosperous that those who have purchased the ships will be warranted in building ships to replace them as they wear out, and thus keep the service going.

I do not want any of the services that are now being maintained to be done away with. I want them kept up, and I believe the Shipping Board is determined to keep them up. I believe that the administration will keep them up; and if the $13,900,000 is not enough to insure that, I am satisfied that Congress will appropriate whatever is necessary to do it. I am satisfied that the estimate will be sent to Congress to keep the ships going. For that reason I am in favor of the provision carrying out the estimate of the Budget.

Mr. McKELLAR. Mr. President, will the Senator yield?

Mr. JONES of Washington. I yield.

Mr. McKELLAR. What does the Senator think of the proposal made by the Senator from Florida that $5,000,000 be added to the item on line 5, in addition to the $13,000,000, making the appropriation the same as it was, and striking out the proviso?

Mr. JONES of Washington. I am not in favor of that.

Mr. McKELLAR. Why not?

Mr. JONES of Washington. I will refer to that in a moment. The Budget estimate for the coming year is $13,900,000. I am not in favor of going above that estimate unless there is an imperative need to do so, unless it is clear that it ought to be done. I do not consider Budget estimates as sacred, by any means, but I do not want to exceed them unless there is some strong necessity for it. I do not believe such necessity exists in this case; that is, I feel that if there is a necessity for more money to maintain the routes we now have, to keep the ships running which we have running now, to perform the services we are performing now, the Budget will send an estimate to Congress so that we can accomplish that purpose.

Mr. HEFLIN. Mr. President, just there, if the Senator will permit me, the Senator from Florida pointed out that last year this appropriation was $24,000,000. This year it is provided that they shall receive only $13,000,000, taking off $11,000,000 in one year. Does the Senator think that is fair to this service, and that the money provided is sufficient to keep the ships going until more money can be appropriated?

Mr. JONES of Washington. Yes; this is ample to keep the ships going until Congress meets again, and we can receive an estimate from the Budget, if it is necessary. This $13,900,000 will certainly be enough to run us up to December, beginning with the 1st of July. But we have the assurance here of the Shipping Board people that they have taken this matter up with the Budget, and that the Budget has assured them that if it is necessary to get more money, they will get it. This is what Mr. O'Connor, the present chairman of the Shipping Board, said, as appears on page 457 of the hearings before the House committee:

> The President of the United States, in his 1927 Budget, has recommended the sum of $13,900,000 for the expenses of the Fleet Corporation and the operation of the Government-owned fleet.
>
> In discussing this amount with the Director of the Bureau of the Budget, he has agreed with Commissioner Walsh and myself that if the operating results of the first six months of the fiscal year 1927 show this amount to be inadequate, a supplemental appropriation will be requested. The Shipping Board will do everything in its power to reduce the expenses and operating losses to a minimum.

There is a positive assurance from the Director of the Budget that if the first six months of the fiscal year show the need of more money, he will submit to Congress an estimate for it; and, in my judgment, if such an estimate is submitted, there is no question in the world but that Congress will make the appropriation. So far as my little influence goes, everything I can do to secure such an appropriation will be done, because, as I said, I am just as heartily in favor of maintaining this service as is the Senator from Florida.

Mr. FLETCHER. Mr. President, does the Senator feel that if that condition arises by December we will then be able to get a deficiency appropriation bill through?

Mr. JONES of Washington. Undoubtedly. Here, again, merely confirmatory of what I have already read, is a statement from Captain Crowley, who is at the head of the Fleet Corporation. He said:

> I have been advised by Chairman O'Connor that the Shipping Board and the Budget Bureau have reached an agreement about the amount of $13,900,000, which is included in the proposed appropriation for the fiscal year 1927, to cover operations of the Fleet Corporation. I concur in the opinion of the Shipping Board that this amount would not be sufficient to cover the losses of our present services, but we are prepared to proceed with this amount since the Bureau of the Budget has agreed to give consideration to a request for a supplemental appropriation should it become evident during the next fiscal year that such will be necessary.

I have no doubt in the world that, if it is shown during the first six months of the next fiscal year that we need more money, the estimate will come to Congress for it, and that Congress will promptly give it.

Mr. FLETCHER. Mr. President, may I interrupt the Senator?

Mr. JONES of Washington. I yield.

Mr. FLETCHER. What I want to feel sure about is that the Shipping Board will not be in position to say, "We must cut this ship out, we must eliminate this route, we must stop this service, because we have not the money to stand the loss."

Mr. JONES of Washington. I do not want to see that, either.

Mr. FLETCHER. I do not want them to be put in a position of or have an excuse for abandoning any of the services that are needed now and are in operation.

Mr. JONES of Washington. I do not, either, and with the assurance that they have from the Director of the Budget, and with the assurance I think they can certainly assume Congress gives them, they will be derelict in their duty if they do it. They state positively that they have been assured by the Director of the Budget that if during the first six months of the next fiscal year—and there can not be any question that this $13,900,000 will last for six months, and possibly longer—they see that they are running short, and they go in ample time to the Director of the Budget, he will send us an estimate; and I am certain they will get the money. If I had any doubt, I would take the position taken by the Senator from Florida, but I do not think there is any question about it.

With reference to this $10,000,000 fund, I am not in favor of cutting that down. I think that is a vital matter. The Shipping Board deemed it so important that they had prepared a bill to provide what we might call a "fighting fund" of $15,000,000. The chairman brought the bill up to me, and I introduced it in the Senate. It was also introduced in the House. But it developed in the debate on that bill in the House that there was no chance for its passage through the House, and because of that fact, very largely, the House voted for the increase in this fund.

The Shipping Board thought $15,000,000 should be provided in this fund. They deem it of vital importanct that they have it. As the Senator from Florida has said, if by intensive competition, no matter by what method, our people who have bought these ships are forced into bankruptcy, so that they will have to turn the ships back to the Government, it is a notice to the world that those who have brought that about will not stop the service by such action, but that the Government will maintain the service, and instead of competing with private parties, they will have to compete with all the power and wealth of the Government.

I think that is of vital importance. I believe that without some such notice of this kind, at least at the end of the five-year period for which we are selling these ships, foreign competition would then force our people into bankruptcy. I consider it of supreme importance that we should create this fund. I think $10,000,000 is not too much; I think $5,000,000 would be too little. We may not have to use a dollar of it, and I hope we will not. I doubt if we will. The mere fact that we have it will be notice to the nations of the world and the shippers of the world that it is to be used for the purpose of defending our own ships from unfair competition, competition designed for the specific purpose of driving them off the sea. If they understand that, they will not resort to any such methods.

It is suggested that this should not be left to the approval of the President. This is a different fund from the operating fund. It is a fund for a specific purpose, aside from the actual care of the ships and their operation.

As I said, it is a fighting fund, it is a defense fund, and I am satisfied that whenever the Shipping Board advised the President that a service which it has established is threatened with destruction because of the competitive methods of foreign shipping and that by reason of the competition ships that have been sold to private parties have come back to the Government and that it is necessary to use a part of the fund to maintain the service, the President would sign the order for it to be so used. I rather think it is a wise thing to put a fund of that character in the control of the President. I think we may depend upon the President to use such a fund in the interest of American commerce and in the interest of an American merchant marine. I am satisfied the President of the United States is just as earnestly in favor of a merchant marine as I am, and that if we place this fund under his control it will be used for the purpose intended, and it will be used effectively and wisely.

For these reasons I believe it is wise for us to adopt the amendment proposed by the committee. If the showing is that we will need more money, I am satisfied that we will get it. By this fund we give notice to our competitors, who can not be criticized for trying to drive our mechant marine off the sea. I do not criticize them for doing it. I admire our competitors for the earnestness with which they maintain their merchant marine. I wish we could get some of their spirit, some of their earnestness, and use their methods to build up and maintain our merchant marine. I am afraid that until we do get something of the kind, until we get what might be termed the shipping spirit, we are not going to get very far in our contest with them; but we notify them by this method that if they use any unfair methods to drive our private people out of the shipping business, they will still have the ships running on a service and backed by the wealth of the United States.

Mr. RANSDELL. Mr. President, I have listened with a great deal of interest to the debate on the pending items. In general, I wish to say that I am in hearty accord with the views expressed by the Senator from Florida [Mr. FLETCHER]. I think that it is quite a concession in the way of economy to reduce the expenditures from $24,000,000 last year, $30,000,000 the previous year, and $50,000,000 the year before that, in attempting to put an American merchant marine on the sea, to $18,691,000 for next year as was done by the House in considering this item. That was a very great reduction. We ought not to proceed more rapidly than that.

I grant that there is a good deal of force in what the chairman of the Appropriations Committee [Mr. WARREN], and the able Senator from Washington [Mr. JONES], have said in arguing that if we need more money we will get it. But, Senators, is not the fact that we reduced this item to $13,900,000 an indication to the Shipping Board that we desire only that sum spent? That is what we appropriate for the next fiscal year,

and when Congress makes a specific appropriation like that, does it not indicate to the Shipping Board, our agency, that that is the sum we desire them to expend, and no more? Of course, Senators, they can not get any other idea from our appropriation. We tell them, "We let you have $24,000,000 last year, but we are cutting you down this year to $13,900,000." That is a formal expression of the Congress that is infinitely more influential, let me say, that an understanding with the Budget officer that if we need more money he will approve our application for more money. Probably he will approve it, but when we say to the Shipping Board, "This is what we give you and no more," it means that we expect them to spend only that sum and it means that they are obliged to cut down their expenditures enormously. It means that they are obliged, if they obey our plain mandate, to cut down on some of the service they have been conducting. No one can get any other idea out of our action in this particular. For that reason I am decidedly in favor of adopting the House provision.

I can not agree with my friend, the able Senator from Florida [Mr. FLETCHER] in his suggestion that we reduce the $10,000,000 item to $5,000,000. I think the Senator from Washington is absolutely right in that particular. It would please me much better if we had followed the suggestion of the Shipping Board and had made that item $15,000,000 for a fighting fund instead of $10,000,000.

Mr. FLETCHER. Mr. President——

The VICE PRESIDENT. Does the Senator from Louisiana yield to the Senator from Florida?

Mr. RANSDELL. I yield.

Mr. FLETCHER. I am afraid the Senator misapprehends my position.

Mr. RANSDELL. Possibly so.

Mr. FLETCHER. I am in favor of keeping the fund as it is, but if it is necessary to give up $5,000,000 of that fund in order to get the House provision retained at $18,000,000, I would prefer that course.

Mr. RANSDELL. I agree with the Senator in that idea. I would much rather have the $18,000,000 above than the $10,000,000 below, but I think we should have both. I think the other item should be made $18,600,000, and the fighting fund should be $10,000,000. I do not think it is too much. I think one of the most important things before the American people is to maintain and build up the American merchant marine, and we ought not to be niggardly. We ought to be generous in order to accomplish that purpose.

Mr. HEFLIN. Mr. President——

Mr. RANSDELL. I yield to the Senator from Alabama.

Mr. HEFLIN. I quite agree with what the Senator is saying. We provided $24,000,000 for this fund last year and instead of dropping off $6,000,000 they have cut off $11,000,000.

Mr. RANSDELL. Yes; practically that.

Mr. HEFLIN. I hope that we can change it back, as the Senator from Florida and the Senator from Louisiana suggest, to $18,000,000.

Mr. JONES of Washington. Mr. President——

Mr. RANSDELL. I yield to the Senator from Washington.

Mr. JONES of Washington. I want to suggest to the Senator that in my judgment if we retain the $18,000,000 we will lose the fighting fund entirely. I do not want to see that happen. I think the fighting fund is a very important thing. I think with the assurance from the Director of the Budget that if the Shipping Board needs more money to maintain this service, an estimate will come down, that we can well afford to rely upon that assurance and get the fighting fund established rather than to get the $18,000,000 with no fighting fund. We will get the $18,000,000 if it is necessary and we will have the fighting fund, too. That, in my judgment, is really the situation.

Mr. WARREN. I may say to the Senator from Louisiana that that is absolutely my information as the Senator has expressed it. I am fully advised that we will have all that is sufficient, $13,000,000 and more, and we will also have the $10,000,000 of insurance, and we are almost sure to lose that if the other item goes through.

Mr. RANSDELL. May I ask the Senator why we are almost sure to lose it? The Senator seems to think we will hold the fighting fund if we leave the other item at $13,900,000. Why does he say we will lose the fighting fund if we restore the item to the amount the House allowed? I can not understand it.

Mr. WARREN. Has the Senator ever served in a conference on an appropriation bill?

Mr. RANSDELL. Oh, yes; I have.

Mr. WARREN. He knows that sometimes matters come up in which we have to surrender.

Mr. RANSDELL. It seems to me we will have the $10,000,000 item if we keep both the $10,000,000 and restore the other to $18,000,000. We would have them in the bill, and if the worst came it seems to me we could adopt the suggestion of the Senator from Florida and cut it down one-half. Certainly we would have the opportunity to compromise. We would have them both in the bill, and it would be a very much better way to go before the country and the world for us to announce here that we are not proposing to reduce and reduce and reduce to what seems to me to be ridiculously small sums the appropriations for American merchant marine. We are going down too fast. I can not give my approval to any such rapid reduction.

Now, with reference to the proviso about the President, I doubt if there is a man in either party who holds the high office of President of the United States in any higher esteem than myself. I regard it as the most important official position of any on earth. I think at the present time it is occupied by a very fine man. But I believe there is a limitation to what a man can do. The office has tremendous duties and responsibilities. I do not think it possible for the President of the United States, with the extremely onerous duties of every kind and sort imposed upon him by the Constitution and the laws of the land, to become a shipping expert, but that is what we have asked of him.

We created a Shipping Board for the purpose of operating the American merchant marine owned by the Nation. We gave it great power. We selected seven fine men as members of the Shipping Board. Why should anyone wish to slap them in the face—because that is what it is—by saying, "Oh, yes, you sold those ships, Mr. Shipping Board, you placed them in the hands of private people, and when the private people can not operate them and you are obliged to take them back, then we will give you a fighting fund of $10,000,000, but you who sold the ships and have taken them back can not use that fighting fund. We will turn that over to the President of the United States." If that is not a slap in the face of the Shipping Board, then I do not understand the plain words of the English language when they are written and printed. That might not be intended, Mr. President and Senators, but it is a fact that that is what it is. For that reason I am opposed to the proviso. I am in favor of the $10,000,000 item. I am in favor of the $18,000,000 item, and I wish it were more. I wish it were every dollar that the Shipping Board said was necessary.

Mr. GLASS. Mr. President, on this side of the Chamber we spent nearly, if not quite, an hour earlier in the day in deriding our adversaries on the other side of the Chamber for presenting an appropriation bill here that carried $60,000,000 greater appropriations than the similar bill carried last year. Now, we have spent a little more than an hour on this side of the Chamber trying to induce our adversaries on the other side to make the appropriation $65,000,000 instead of $60,000,000.

Mr. McKELLAR. Mr. President, if the Senator from Virginia will yield to me, I desire to say that I do not think that is the purpose of anyone. We desire, as I understood the Senator from Florida [Mr. FLETCHER]—certainly that was my understanding—to take $5,000,000 from the appropriation carried in line 21, on page 32, of the bill, and transfer it back to the appropriation in line 5, on the same page, not changing the aggregate amount of the appropriation at all.

Mr. GLASS. Oh, no; it was proposed to increase the appropriation $5,000,000.

Mr. McKELLAR. Oh, no.

Mr. FLETCHER. No. The appropriation is already carried in the House bill. It is proposed by the Senate committee to reduce the appropriation in line 5, on page 32, $5,000,000.

Mr. GLASS. I know it is proposed to reduce it $5,000,000, and under that reduction we have appropriations here in the independent offices bill, which involve an expenditure of $60,000,000 more than the similar bill carried last year. We spent an hour here in deriding our friends on the other side of the Chamber for their extravagance, and now we have spent more than an hour inviting them to assist us in increasing the bill $5,000,000 more. Not only that, but one of my colleagues here has lamented that it is not very much more than that. So it does not seem to me that that is a very consistent attitude for Senators on this side of the Chamber to occupy.

With respect to the proviso, the Senator from Louisiana [Mr. RANSDELL] insists that it is a slap in the face of the Shipping Board. As a matter of fact, the Shipping Board itself prepared that provision of the bill, and if it is a slap it has slapped itself. That is just about the amount of that.

As to the fighting fund, I approved it in committee; at least, I voted for it, and I have been very much impressed by the argument in favor of it, particularly the argument made here

to-day by the Senator from Florida [Mr. FLETCHER], and made with even greater emphasis by the Senator from the State of Washington [Mr. JONES]. Yet there are two sides to that proposition.

While it is notice, perhaps, to foreign governments that this Government is not disposed quietly to see the American merchant marine driven from the seas by sharp competition—I would not say unfair competition, for open competition is fair—it is also notice to those who may buy our ships that they are engaging in the business not at their own risk but at the risk of the Government, and that when they adventure upon this enterprise they may be assured that the Government will take the ships back whenever they say so.

Mr. SMOOT. They would lose their initial payment, however.

Mr. GLASS. Oh, yes; but they will not make as consummate an effort to be successful in the business if the Government is taking the risk as they would make if they were compelled to take the risk. Nevertheless, I am so anxious to have an American merchant marine established that I approved that proposition in the committee, but I can not get my consent to increase the appropriation $5,000,000 when the committee had the assurance that $13,000,000 might be all that would be required, and that should it prove inadequate the Shipping Board would come to Congress and request a supplement to the fund. Why should we suggest, if not insure, an extravagant use of Government funds by appropriating more than the Shipping Board have stated it actually needs? It may be that is the reason that appropriations continue to rise and rise and rise.

I do not understand that the distinguished Senator from Arkansas [Mr. ROBINSON] was criticizing the administration for a lack of economy. He was simply commenting on its unwarranted boast of reducing public expenditures, and to that extent and in the moderate way in which he did it I approve. It is the Congress that frequently raises these appropriations. We are trying to do it right now. We are trying to expend $5,000,000, which the Shipping Board itself has stated it may not require. For one, I shall not vote to do it.

The VICE PRESIDENT. The question is on agreeing to the amendment of the committee.

Mr. FLETCHER. Mr. President, just one moment. Of course, the Shipping Board would not spend this money if they did not need it; they are not obliged to spend it even if it shall be appropriated for them. However, I wish to put into the RECORD a statement which appeared in a recent publication—I do not recall the name of the publication now, but it is of the issue of March 26—by the chairman of the board of the Manchester Liners (Ltd.), a shipping corporation operating ships out of Manchester, England, showing the division of the day's earnings all through the year.

Out of 365 days, 5 days' freight earnings were absorbed "for overhead expenses, etc., management, taxation, and interest on capital." The freight earnings for the other 360 days go for other necessary expenses. The statement shows that they are carrying freight now 3,000 miles, from the United States to England, for 10 cents a bushel. Just imagine what the charges would be if we were dependent upon foreign ships to move that freight. At one time it will be recalled the freight went to 50 cents a bushel in 1914 on wheat. That only emphasizes the importance of maintaining our merchant marine.

The VICE PRESIDENT. Without objection, the matter referred to by the Senator from Florida will be inserted in the RECORD.

The matter referred to is as follows:

OCEAN TRANSPORTATION MARCH, 1925

We have published several times statements given out by railroad companies showing the distribution of gross earnings by percentages to the several chief items of their expenditures, including dividends, and the remainder, if any, carried to surplus. They all show that the capital charges are a relatively small factor in rail transportation. Below is given a similar showing of the distribution of the earnings of a steamship company.

The Manchester Liners (Ltd.) is a shipping corporation operating ships out of Manchester, England. The report of the chairman of the board, submitted at the annual meeting or shareholders recently, contained the following analysis and also an interesting statement of the charge for carrying wheat across the Atlantic:

"As a matter of interest, I have had taken out some statistics showing exactly how the gross earnings of the steamers engaged in the Canadian and United States trades have been absorbed, and it may serve a useful purpose to quote these statistics:

	Days
Freight earnings absorbed by port charges	36
Freight earnings absorbed by cost of stevedoring	115
Freight earnings absorbed by wages, etc.	41
Freight earnings absorbed by provisions and stores	19
Freight earnings absorbed by insurance and claims	30
Freight earnings absorbed by repairs, maintenance, commissions, brokerage, and advertising	35
Freight earnings absorbed by fuel	58
Freight earnings absorbed by depreciation at 5 per cent on written-down value of vessels	26
	360
Freight earnings for overhead expenses, etc., management, taxation, and interest on capital	5
	365

"It can not be too strongly emphasized that the freight on our imports and exports represents a very small fraction of the c. i. f. value. Although I have mentioned it before, and am therefore incurring the charge of repetition, I would again remark that we are carrying our principal import of wheat from the United States and Canada, a distance of about 3,000 miles, to this country to-day at a figure of about one-third of 1 farthing per pound (one-sixth of a cent per pound, or 10 cents per bushel)."

The VICE PRESIDENT. The question is on agreeing to the committee amendment, on page 32, line 5, to strike out "$18,691,000" and insert "$13,900,000."

The amendment was agreed to.

The reading of the bill was resumed.

The next amendment of the Committee on Appropriations was, on page 32, after line 16, to insert:

To enable the United States Shipping Board Emergency Fleet Corporation to operate ships or lines of ships which have been or may be taken back from the purchasers by reason of competition or other methods employed by foreign shipowners or operators, $10,000,000: *Provided*, That no expenditure shall be made from this sum without the prior approval of the President of the United States.

The amendment was agreed to.

The next amendment was, on page 39, line 24, after the word "grade," to insert "except that in unusually meritorious cases of one position in a grade advances may be made to rates higher than the average of the compensation rates of the grade, but not more often than once in any fiscal year, and then only to the next higher rate," so as to read:

SEC. 2. In expending appropriations or portions of appropriations contained in this act for the payment for personal services in the District of Columbia in accordance with the classification act of 1923, the average of the salaries of the total number of persons under any grade in any bureau, office, or other appropriation unit shall not at any time exceed the average of the compensation rates specified for the grade by such act, and in grades in which only one position is allocated the salary of such position shall not exceed the average of the compensation rates for the grade except that in unusually meritorious cases of one position in a grade advances may be made to rates higher than the average of the compensation rates of the grade, but not more often than once in any fiscal year, and then only to the next higher rate.

The amendment was agreed to.

The reading of the bill was concluded.

The VICE PRESIDENT. The Chair is informed that the amendment on page 14, beginning in line 9, was stated but not agreed to.

Mr. WARREN. Mr. President, that amendment will be taken up and considered to-morrow morning. I present now the amendment which I send to the desk, and after that shall have been acted on I will let the bill go over until to-morrow morning.

The VICE PRESIDENT. The amendment offered by the Senator from Wyoming will be stated.

The CHIEF CLERK. On page 7, line 6, after the word "expended," it is proposed to insert the following:

: *Provided*, That the act approved February 24, 1925, shall be construed as authorizing the expenditure, by authority of the Arlington Memorial Bridge Commission, of such portion as said commission shall determine, of this or any other appropriation heretofore or hereafter made to carry out said project, for the employment, at such compensation and allowances, and on such tems as said commission shall decide, of expert consultants, engineers, architects, sculptors or artists, or firms, partnerships, or associations thereof, including the facilities, service, travel, and other expenses of their respective organizations so far as employed upon this project, in accordance with the usual customs of their several professions, without regard to the restrictions of law governing the employment, salaries, or traveling expenses of regular employees of the United States.

The VICE PRESIDENT. The question is on agreeing to the amendment.

The amendment was agreed to.

CONSIDERATION OF BRIDGE BILLS

Mr. JONES of Washington obtained the floor.

Mr. BINGHAM. Mr. President, will the Senator yield to me for a moment?

Mr. JONES of Washington. I yield to the Senator from Connecticut.

Mr. BINGHAM. I ask unanimous consent at this time, out of order, to report favorably from the Committee on Commerce, each with an amendment, sundry bills authorizing the construction of bridges in Tennessee, and I submit a report on each bill. I desire also to ask unanimous consent for their immediate consideration.

The VICE PRESIDENT. Is there objection? The Chair hears none, and the bills will be received.

The bills reported by Mr. BINGHAM from the Committee on Commerce are as follows:

A bill (S. 3193) granting the consent of Congress to the highway department of the State of Tennessee to construct a bridge across the Tennessee River on the Waverly-Camden road between Humphreys and Benton Counties, Tenn. (Rept. No. 380);

A bill (S. 3194) granting the consent of Congress to the highway department of the State of Tennessee to construct a bridge across the Cumberland River on the Gainesboro-Red Boiling Springs road in Jackson County, Tenn. (Rept. No. 381);

A bill (S. 3195) granting the consent of Congress to the highway department of the State of Tennessee to construct a bridge across the Tennessee River on the Lenoir City-Sweetwater road in Loudon County, Tenn. (Rept. No. 382);

A bill (S. 3196) granting the consent of Congress to the highway department of the State of Tennessee to construct a bridge across the Tennessee River on the Savannah-Selmer road in Hardin County, Tenn. (Rept. No. 383); and

A bill (S. 3197) granting the consent of Congress to the highway department of the State of Tennessee to construct a bridge across the Tennessee River on the Linden-Lexington road in Decatur County, Tenn. (Rept. No. 384).

Mr. BINGHAM. I now ask unanimous consent for the immediate consideration of the bills. I will say for the benefit of Senators that the bills all relate to bridges in the State of Tennessee in which the Senators from that State are interested. They grant to the highway department of the State of Tennessee the right to construct the bridges.

Mr. McKELLAR. Mr. President, I ask whether they are the five bills that were introduced by my colleague, the junior Senator from Tennessee [Mr. TYSON], and myself authorizing the State highway department to construct certain bridges?

Mr. BINGHAM. I will say to the Senator that those are the bills which I have just reported.

Mr. McKELLAR. Very well.

Mr. BINGHAM. Each bill has a formal amendment which has been adopted as to all similar bills, providing that the Secretary of War and the Chief of Engineers shall pass on the ability of the bridge to carry the weight and volume of traffic which may pass over it.

Mr. McKELLAR. I thank the Senator for reporting them.

The VICE PRESIDENT. Is there objection to the request of the Senator from Connecticut for the present consideration of the bills referred to by him? The Chair hears none.

TENNESSEE RIVER BRIDGE ON WAVERLY-CAMDEN ROAD, TENN.

The Senate, as in Committee of the Whole, proceeded to consider the bill (S. 3193) granting the consent of Congress to the highway department of the State of Tennessee to construct a bridge across the Tennessee River on the Waverly-Camden road between Humphreys and Benton Counties, Tenn., which had been reported from the Committee on Commerce with an amendment on page 1, line 11, after the numerals "1906," to insert a colon and the following proviso: "*Provided*, That such bridge shall not be constructed or commenced until the plans and specifications thereof shall have been submitted to and approved by the Secretary of War and the Chief of Engineers as being also satisfactory from the standpoint of the volume and weight of the traffic which will pass over it," so as to make the bill read:

Be it enacted, etc., That the consent of Congress is hereby granted to the highway department of the State of Tennessee, and its successors and assigns, to construct, maintain, and operate a bridge and approaches thereto across the Tennessee River at a point suitable to the interests of navigation, on the Waverly-Camden road in Humphreys and Benton Counties in the State of Tennessee, in accordance with the provisions of the act entitled "An act to regulate the construction of bridges over navigable waters," approved March 23, 1906: *Provided*, That such bridge shall not be constructed or commenced until the plans and specifications thereof shall have been submitted to and approved by the Secretary of War and the Chief of Engineers as being also satisfactory from the standpoint of the volume and weight of the traffic which will pass over it.

SEC. 2. That the right to alter, amend, or repeal this act is hereby expressly reserved.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

CUMBERLAND RIVER BRIDGE, JACKSON COUNTY, TENN.

The Senate, as in Committee of the Whole, proceeded to consider the bill (S. 3194) granting the consent of Congress to the highway department of the State of Tennessee to construct a bridge across the Cumberland River on the Gainesboro-Red Boiling Springs road, in Jackson County, Tenn., which had been reported from the Committee on Commerce with an amendment, on page 2, line 2, after the numerals "1906" to insert a colon and the following proviso: "*Provided*, That such bridge shall not be constructed or commenced until the plans and specifications thereof shall have been submitted to and approved by the Secretary of War and the Chief of Engineers as being also satisfactory from the standpoint of the volume and weight of the traffic which will pass over it," so as to make the bill read:

Be it enacted, etc., That the consent of Congress is hereby granted to the highway department of the State of Tennessee and its successors and assigns to construct, maintain, and operate a bridge and approaches thereto across the Cumberland River at a point suitable to the interests of navigation on the Gainesboro-Red Boiling Springs road, in Jackson County, in the State of Tennessee, in accordance with the provisions of the act entitled "An act to regulate the construction of bridges over navigable waters," approved March 23, 1906: *Provided*, That such bridge shall not be constructed or commenced until the plans and specifications thereof shall have been submitted to and approved by the Secretary of War and the Chief of Engineers as being also satisfactory from the standpoint of the volume and weight of the traffic which will pass over it.

SEC. 2. That the right to alter, amend, or repeal this act is hereby expressly reserved.

The amendment was agreed to.

The bill was reported to the Senate as amended and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

TENNESSEE RIVER BRIDGE, LOUDON COUNTY, TENN.

The Senate, as in Committee of the Whole, proceeded to consider the bill (S. 3195) granting the consent of Congress to the highway department of the State of Tennessee to construct a bridge across the Tennessee River on the Lenoir City-Sweetwater road in Loudon County, Tenn., which had been reported from the Committee on Commerce with an amendment, on page 2, line 2, after the numerals "1906," to insert a colon and the following proviso: "*Provided*, That such bridge shall not be constructed or commenced until the plans and specifications thereof shall have been submitted to and approved by the Secretary of War and the Chief of Engineers as being also satisfactory from the standpoint of the volume and weight of the traffic which will pass over it," so as to make the bill read:

Be it enacted, etc., That the consent of Congress is hereby granted to the highway department of the State of Tennessee and its successors and assigns to construct, maintain, and operate a bridge and approaches thereto across the Tennessee River at a point suitable to the interests of navigation, on the Lenoir City-Sweetwater road in Loudon County, Tenn., in accordance with the provisions of the act entitled "An act to regulate the construction of bridges over navigable waters," approved March 23, 1906: *Provided*, That such bridge shall not be constructed or commenced until the plans and specifications thereof shall have been submitted to and approved by the Secretary of War and the Chief of Engineers as being also satisfactory from the standpoint of the volume and weight of the traffic which will pass over it.

SEC. 2. That the right to alter, amend, or repeal this act is hereby expressly reserved.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

TENNESSEE RIVER BRIDGE, HARDIN COUNTY, TENN.

The Senate, as in Committee of the Whole, proceeded to consider the bill (S. 3196) granting the consent of Congress to the highway department of the State of Tennessee to con-

truct a bridge across the Tennessee River on the Savannah-Selmer road in Hardin County, Tenn., which had been reported from the committee with an amendment, on page 2, line 2, after the numerals "1906," to insert a colon and the following proviso: "*Provided*, That such bridge shall not be constructed or commenced until the plans and specifications thereof shall have been submitted to and approved by the Secretary of War and the Chief of Engineers as being also satisfactory from the standpoint of the volume and weight of the traffic which will pass over it," so as to make the bill read:

Be it enacted, etc., That the consent of Congress is hereby granted to the highway department of the State of Tennessee and its successors and assigns to construct, maintain, and operate a bridge and approaches thereto across the Tennessee River at a point suitable to the interests of navigation, on the Savannah-Selmer road in Hardin County, in the State of Tennessee, in accordance with the provisions of the act entitled "An act to regulate the construction of bridges over navigable waters," approved March 23, 1906: *Provided*, That such bridge shall not be constructed or commenced until the plans and specifications thereof shall have been submitted to and approved by the Secretary of War and the Chief of Engineers as being also satisfactory from the standpoint of the volume and weight of the traffic which will pass over it.

SEC. 2. That the right to alter, amend, or repeal this act is hereby expressly reserved.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

TENNESSEE RIVER BRIDGE IN DECATUR COUNTY, TENN.

The Senate, as Committee of the Whole, proceeded to consider the bill (S. 3197) granting the consent of Congress to the highway department of the State of Tennessee to construct a bridge across the Tennessee River on the Linden-Lexington road in Decatur County, Tenn., which had been reported from the Committee on Commerce with an amendment on page 2, line 2, after the numerals "1906," to insert a colon and the following proviso: "*Provided*, That such bridge shall not be constructed or commenced until the plans and specifications thereof shall have been submitted to and approved by the Secretary of War and the Chief of Engineers as being also satisfactory from the standpoint of the volume and weight of the traffic which will pass over it," so as to make the bill read:

Be it enacted, etc., That the consent of Congress is hereby granted to the Highway Department of the State of Tennessee and its successors and assigns to construct, maintain, and operate a bridge and approaches thereto across the Tennessee River at a point suitable to the interests of navigation on the Linden-Lexington road in Decatur County in the State of Tennessee, in accordance with the provisions of the act entitled "An act to regulate the construction of bridges over navigable waters," approved March 23, 1906: *Provided*, That such bridge shall not be constructed or commenced until the plans and specifications thereof shall have been submitted to and approved by the Secretary of War and the Chief of Engineers as being also satisfactory from the standpoint of the volume and weight of the traffic which will pass over it.

SEC. 2. That the right to alter, amend, or repeal this act is hereby expressly reserved.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

ORDER FOR RECESS

Mr. JONES of Washington. I ask unanimous consent that when the Senate concludes its business to-day, it take a recess until 12 o'clock to-morrow.

The VICE PRESIDENT. Is there objection? Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. JONES of Washington. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After eight minutes spent in executive session the doors were reopened, and (at 5 o'clock and 35 minutes p. m.), under the order previously entered, the Senate took a recess until to-morrow, Tuesday, March 16, 1926, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate March 15, 1926

COMMISSIONER OF IMMIGRATION

Benjamin M. Day, of New York, commissioner of immigration at the port of New York.

APPOINTMENTS, BY TRANSFER, IN THE REGULAR ARMY

CAVALRY

Second Lieut. John Laing De Pew, Air Service, with rank from June 12, 1925.

Second Lieut. Theodore Anderson Baldwin, 3d, Air Service, with rank from June 12, 1925.

FIELD ARTILLERY

Second Lieut. Wiley Thomas Moore, Air Service, with rank from June 12, 1925.

Second Lieut. Raymond Cecil Conder, Air Service, with rank from June 12, 1925.

Second Lieut. Russell Thomas Finn, Air Service, with rank from June 12, 1925.

PROMOTION IN THE REGULAR ARMY

TO BE CAPTAIN

First Lieut. John Calvin Sandlin, Infantry, from March 6, 1926.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 15, 1926

POSTMASTERS

OREGON

Henry N. Tohl, Nehalem.

TENNESSEE

Roberta J. Tatum, Alamo.
Harreitt L. Lappin, Monteagle.
Laura W. Malone, Alexandria.
William D. Howser, Clarksville.
Joe R. Taylor, Etowah.
George B. Beaver, McMinnville.

TEXAS

Clarence Walters, Alice.
Dibrel G. Melton, Allen.
Fred P. Ingerson, Barstow.
Napoleon B. Warner, Bells.
Benno B. Volkening, Bellville.
Oscar Hunt, Canyon.
Dave C. Dodge, Claude.
Benjamin F. Robey, Coleman.
Oria H. Sieber, Crosbyton.
Annie B. Causey, Doucette.
Okey B. Cline, Emory.
Simon J. Enochs, Georgetown.
Charles L. Long, Graham.
William E. Shields, Grand Saline.
Joe C. Hailey, Hughes Springs.
Elroy L. McCord, Katy.
Herman H. Duncan, Kaufman.
Maggie R. Hopkins, Lone Oak.
Ora R. Porterfield, Lott.
Isidore Newman, Mexia.
William H. Everitt, North Pleasanton.
Horace H. Watson, Orange.
John W. Neese, Pflugerville.
Hermon R. Ivie, Point.
Charles L. Wiebusch, Riesel.
Warner W. McNaron, Rotan.
Ora L. Griggs, Sanatorium.
Maggie Exum, Shamrock.
Homer B. Young, Shiro.
Layfitte T. Perateaux, Spring.
Mamie Dyer, Tolar.
Walter M. Hudson, Weatherford.
Emanuel T. Teller, Westhoff.
Peter J. Sherman, Whitney.
Leeander M. Gilbreath, Winnsboro.
Tom Hargrove, Woodsboro.
William B. Lee, Wortham.

VIRGINIA

W. Frank Bowman, Altavista.
Harry Fulwiler, Buchanan.
Walter C. Stout, Cumberland.
Robert B. Rouzie, Tappahannock.
Bruce L. Showalter, Weyers Cave.